LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

23rd Meeting, 2014 (Session 4)

Wednesday 24 September 2014

The Committee will meet at 9.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   - SSI 2014/214: Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland)
   - SSI 2014/219: The Building (Scotland) Amendment Regulations 2014

3. **Community Empowerment (Scotland) Bill:** The Committee will take evidence, in round table format, on the Bill at Stage 1 from—

   George Black, Chair, SOLACE Scotland;
   
   Pauline Douglas, Head of Operations, Coalfields Regeneration Trust;
   
   Angus Hardie, Chief Executive, Scottish Community Alliance;
   
   Ian Cooke, Director, Development Trusts Association Scotland;
   
   Felix Spittal, Policy Officer, Scottish Council for Voluntary Organisations (SCVO);
   
   Calum Irving, Chief Executive, Voluntary Action Scotland;
   
   Professor Annette Hastings, Senior Lecturer in Urban Studies, University of Glasgow;
   
   Councillor David O’Neill, President of COSLA;
Councillor Harry McGuigan, Spokesperson for Community Well-being and Safety, COSLA;

Barry McCulloch, Senior Policy Advisor, Federation of Small Businesses;

Eric Samuel, Senior Policy and Learning Manager, BIG Lottery Fund;

and then from—

Ian Turner, Bill Team Leader, Alasdair McKinlay, Head of Community Planning and Community Empowerment Unit, Norman McLeod, Scottish Government Legal Directorate, Dave Thomson, Land Reform Tenancy Unit, Rachel Rayner, Scottish Government Legal Directorate, and Dr Amanda Fox, Food and Drink Policy Leader, Scottish Government.

4. **Community Empowerment (Scotland) Bill** The Committee will consider the evidence received.

5. **Community Empowerment (Scotland) Bill (in private):** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

6. **Scottish Public Service Ombudsman** The Committee will consider its approach to its scrutiny of the Scottish Public Services Ombudsman's annual report.

David Cullum

Clerk to the Local Government and Regeneration Committee

Room T3.60

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Edinburgh

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The papers for this meeting are as follows—

**Agenda Item 2**

Subordinate Legislation Cover Note

**Agenda item 3**

SPICe Briefing

PRIVATE PAPER

Written Submissions

**Agenda item 5**

PRIVATE PAPER

**Agenda item 6**

PRIVATE PAPER
Introduction

1. This paper seeks to inform Members’ consideration of two negative SSIs—
   - SSI 2014/214: The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland)
   - SSI 2014/219: The Building (Scotland) Amendment Regulations 2014

Procedure in committee

2. Under negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument.

The Town and Country Planning (Fees for Applications and Deemed Applications (Scotland): SSI 2014/214.

Background

3. This instrument was laid on 31 July 2014, and the Local Government and Regeneration Committee was designated as lead committee. The Committee must report on the instrument by 28 October 2014.

4. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 12 August 2014 and determined that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.

5. The regulations are subject to negative procedure. No motion to annul has been lodged. It will come into force on 1 November 2014.

Purpose of the Instrument

6. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (the "principal Regulations") make provision for the payment of fees to planning authorities.

7. The effect of these Regulations is that all fees currently payable under the principal Regulations are increased by approximately 5%. The increase applies from 1 November 2014. The overall resourcing of the planning system is the responsibility of local authorities. The planning service is financed through the local authority's budget and fees from planning applications. The purpose of this instrument is to ensure that the planning fee recovers more of the local authority costs associated with the processing of planning applications from initial registration to decision stage.

Background
8. This instrument was laid on 14 August 2014 and the Local Government and Regeneration Committee was designated as lead committee. The Committee must report on the instrument by 7 November 2014.

9. The Delegated Powers and Law Reform Committee considered the regulations at its meeting on 19 August 2014 and determined it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

10. This instrument is subject to the negative procedure. It comes into force on 1 October 2015, however Regulation 3 makes a transitional provision, the effect of which is that the 2004 Regulations as amended will not apply to work which is either completed before 1 October 2015 or work which has not been completed by that date, but the contract for which has been entered into before that date, and the work itself is completed by 31 January 2016.

Purpose of the Instrument
11. This instrument amends the Building (Scotland) Regulations 2004 ("the 2004 Regulations") to require certain extensions to non-domestic buildings to comply with a specified building standard.

12. Schedule 5 to the 2004 Regulations sets out various building standards applicable to design and construction. Paragraph 6.1 of Schedule 5 sets a standard in relation to carbon dioxide emissions. The standard does not apply to alterations and extensions to buildings as set out in the limitation to the standard, other than those that are specified.

13. Regulation 2(2) reframes the limitation on the standard set out in paragraph 6.1 of Schedule 5 so as to exclude extensions to non-domestic property from the limitation if the extension will have an area of greater than 100 square metres and greater than 25% of the building being extended. The effect is that such extensions will, from 1 October 2015, be required to comply with the carbon dioxide emissions standard set out at paragraph 6.1.

14. The Regulations also clarify the limitation to the building standard set out at paragraph 6.9 of Schedule 5 to the 2004 Regulations. Paragraph 6.9 concerns energy performance certificates.

Action
16. No motions to annul any of these instruments have been lodged. Unless a motion to annul the instrument is lodged, the Committee need only consider the instruments, and indicate whether it is content not to make any recommendations on them.

18. Is the Committee content not to make any recommendations to the Parliament on these instruments?

Paul Nicholson
Committee Assistant
17 September 2014
Local Government and Regeneration Committee

Community Empowerment (Scotland) Bill

Summary of written submissions

This paper provides a summary of the key issues raised in the submissions to the Committee's call for evidence, which closed on Friday 5 September. All submissions received by close of business on Monday 8 September (totalling 147) were considered as part of this summary. Submissions received after this point are available to Members' but due to the time needed to prepare the summary have not been considered as part of this paper.

Like previous summaries, this document is structured according to the questions asked in the call for evidence. Where submissions chose not to address the specific questions asked, responses have been put under the most appropriate question.

Given the number of detailed submissions received it has not been possible to reflect the views of all respondents on all questions. By its nature this document is a high-level summary of the main points raised.

Allan Campbell

SPICe Research

23 September 2014

Note: Committee briefing papers are provided by SPICe for the use of Scottish Parliament committees and clerking staff. They provide focused information or respond to specific questions or areas of interest to committees and are not intended to offer comprehensive coverage of a subject area.

The Scottish Parliament, Edinburgh, EH99 1SP www.scottish.parliament.uk
1. To what extent do you consider the Bill will empower communities, please give reasons for your answer?

A number of common themes emerged in responses to this question. A very high number of submissions on both this question and question 3 highlighted the concern that the Bill would benefit already well-organised and active affluent communities to a much greater extent than disadvantaged communities.

The Scottish Community Alliance summed up the view of many third sector respondents, stating that: “this Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves. Therefore, it is important to be clear that the Bill on its own is only going to present opportunities that local people may or may not be able to take advantage of. The extent to which local people choose to, or are able to, take advantage of these opportunities will inevitably vary across the country and be determined by a range of other factors – some internal, some external. These factors may be categorised as capacity (skills, experience, confidence and access to external networks), resources (funding and human), and the immediate context (supportive public agencies, local development opportunities). Each of these factors will need to be addressed if the full potential of this Bill is to be maximised.”

The Poverty Alliance made similar points, stating that: “the most important aspect of this Bill is around empowering Scotland’s most disadvantaged communities, and narrowing inequalities between those communities which are already empowered and those which will require more support. We would like to see this Bill prioritise Scotland’s poorest communities. There is a danger that the Bill, in its current form, will most benefit those communities which are already empowered and able to take advantage of the provisions in the Bill.”

Oxfam also focussed on the impact on the most disadvantaged: “Our main concern is that unless a concerted effort and specific resources are provided to engage and support our most deprived communities, the Bill may: a) Allow better-off communities to utilise the various mechanisms contained in the legislation to become more empowered, thereby accentuating inequalities. b) Fail to ensure that public sector planning and service delivery is designed with our most deprived communities at the forefront, thereby reducing inequalities and prioritising prevention.”

Annette Hastings stated that: “Historically a key driver of community development approaches to securing more effective participation has been the belief that more and effective participation might contribute to narrowing the gaps in resources, attention, opportunities and outcomes between more and less disadvantaged communities. However, I am concerned that
provisions in the Bill may exacerbate already existing social and economic inequalities by further empowering those who already hold or have access to power. While the Bill and the associated Policy Memorandum acknowledge concerns voiced during the consultation process that communities are not equally equipped to take advantage of the provisions in the Bill, it lacks specific provisions designed to address these concerns.” Steve Rolfe made similar points.

In his submission, Leslie Howson expressed the view that: “The process is very rigid and dictatorial and controlled from the top down and not the bottom (i.e. the community level) upwards. I can appreciate the need for the process to be controlled at each stage presumably to ensure accountability, combat corruption and guide the process. However, national outcomes, determined by the Scottish Minister, local outcome improvement plan determined by each community planning partnership. No community involvement there then! Who sets the outcome and on what criteria?. Those eligible to be community planning partners seems to be extremely limited.”

Development Trusts Association Scotland were broadly supportive of the Bill, stating that it “has the potential to encourage and support many more communities to become involved in community-led regeneration and crucially, to make it make it easier for communities to acquire vital or important physical assets, and / or have a greater role in the delivery of local services. DTA Scotland acknowledges that this will depend to a large extent on getting the detail within the accompanying statutory guidance right, but believes that parts of the Bill provide a useful overview and framework for this to take place.”

The Scottish Community Development Centre focussed on the difference between engagement and empowerment: “If, in policy, effective engagement remains the critical factor for effective community planning, we would argue that the Bill does not go far enough in its requirement to “consult such community bodies as it considers appropriate” in preparing the local outcomes improvement plan. Instead, this part of the Bill should specify that community planning partners should ‘engage’ with community bodies, and that this engagement should be in line with the definition of community engagement embodied within the National Standards for Community Engagement.”

Many submissions (from public bodies and the third sector) noted that references to these National Standards had been removed from the Bill following the last consultation. North Ayrshire Council stated: “the proposed use of the National Standards for Community Engagement, and the requirement to publish and implement a community engagement plan as discussed in the previous consultation on the Community Empowerment and Renewal Bill, should be reintroduced.”

Community Learning and Development Managers Scotland also examined the concept of empowerment: “Empowerment is not simply a matter of having rights to participate. Although these rights are necessary, they are not
sufficient. The enhanced duties for community planning will not lead to the empowerment of communities unless they are used to continue to engage with communities across a broad range of issues, to give community empowerment the priority it needs and to apply principles of social justice in doing so.” The CLD Standards Council for Scotland noted that the “adequacy of the skills, knowledge and capability base” of the public sector were critical in meeting the demands of the Bill (this is looked at in more detail in Question 2 of the call for evidence).

Voluntary Health Scotland raised the issue of “co-production” of services, linked to the need to address community capacity: “Following the recommendations of the Christie Commission on the Future Delivery of Public Services, this should be strengthened to include a significant focus on communities coming together to not only participate, but to co-produce services. … While this legislation seeks to address this inconsistency and promote best practice throughout Scotland, it is vital that the capacity of all community groups is supported at local levels by public sector partners to ensure that the most vulnerable groups are not further marginalised, and in turn, inequalities are not strengthened by the legislation.” The Edinburgh Compact suggested that the guidance accompanying the bill should be co-produced with the third sector.

Assemble Collective Self Build raised issues of funding for capacity building: “Linking the two aspects of community ‘enabling’ and community funding is critical to the success of this legislation whereby a clear framework should exist so that groups seeking to improve their living environment or protect and develop local assets can get immediate access to required expertise and/or financial assistance.” The National Trust also raised the issue of funding: “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.”

Public sector bodies also considered funding. Argyll and Bute Council stated: “Where empower is making someone stronger and confident to control their life and claim their right then the Bill does not adequately address this, as the Bill does not take due consideration of the resource required to enable people in communities and community groups, as defined in the Bill, to become stronger and confident in order to access the rights being provided. The Scottish Government should consider this aspect of empowerment and the costs and resources required in order to fully realise the potential of the Bill.”

Both HIV Scotland and Inclusion Scotland highlighted possible unintended negative impact on those “currently marginalised” from engagement. Inclusion stated that: “Community should not be defined by a narrow definition
based on location and residence. Disabled people are often excluded from traditional communities, or have specific needs and interests that are best addressed by their own community.”

Highland Council raised the omission of community councils from the Bill: “Given the extensive work over recent years in considering the roles and responsibilities of Community Councils, it would appear a missed opportunity not to address this within the current Bill where it would sit so comfortably. Community Council legislation primarily dates to the 1973 Local Government Act. The current community context has changed dramatically, as evidenced by this Bill, and therefore it is at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.”

A number of community councils responded to this question in some detail, with many expressing disappointment that the Bill did not contain reforms to the legislation underpinning community councils. Portmoak Community Council stated that the Bill: “ignores the potential to use community councils as the elected representatives of their respective areas as the means of empowering those communities. It acknowledges the difficulty created by the fact that not all areas have a community council, but that is largely the result of their being seen as powerless and given (at least in Perth & Kinross) scant recognition by their Local Authorities. If given more concrete functions than they have at the moment there would be more interest in forming and joining Community Councils. For example the introduction of a “Community Controlled Body” into Part 3 of the bill is completely unnecessary in an area where a Community Council (which fits the definition of a Community Controlled Body exactly) is already in existence.”
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?

In general, submissions saw the Bill as potentially positive for public sector organisations, but issues of capacity, attitude and funding were seen as possible disadvantages.

Orkney Islands Council stated that in its view: “Ideally the legislation should be there to be resorted to if the simpler route to participation were to be blocked, rather than being obligatory on every occasion.” Perth and Kinross Council explained that: “An organisational mindset which sees communities as often best placed to develop local solutions to local issues will be critical. Equally there is a need to maintain accountability to the wider public in how local services are run, and the reasons for approving or refusing asset transfers or other community-led approaches to running local services must be transparent. If local asset transfers or other community-led schemes fail, all the risk and cost will return to the public sector and there may be damage to relationships within partnerships and communities as a result, with local assets becoming potentially unused and unusable by communities and public sector alike.”

NHS Grampian highlighted specific areas of the bill that would require additional capacity: “organisations will be required to put in place processes to manage community requests to improve outcomes of services. The parameters for such requests has not been set out in detail in the Bill and we would welcome more guidance on what constitutes an ‘appropriate’ community body and what is ‘reasonable’ in terms of refusal of such a request. Similarly, the provisions of the Bill enable community organisations to request and receive ‘detailed’ information about a property that they are interested in. This may include detailed information about the energy efficiency and maintenance costs. This would again require a process to be put in place and for current NHS Board Estates capacity to be directed at providing such information, at a potential cost to maintenance and delivery of Board outcomes and target.”

Glasgow City Council proposed that: “for the aspirations of the Bill to be achieved, for community empowerment to become part of the culture of organisations a programme of organisational/staff development would be helpful, even essential. We suggest that the Scottish Government initiate discussions with Local Authorities and community planning partners on how to support this and delivery of the Bill’s aspirations.”

Aberdeenshire CPP warned that: “it is possible that the Bill will be perceived nationally as a means of dumping responsibilities on to community bodies. It is important therefore that there is sufficient support in place for communities to get what they need out of the Bill. On that note, there are resource implications arising from the provisions in the Bill. Aberdeenshire Community Planning Partnership through its Single Outcome Agreement and Local Community Plans remains committed to focusing on outcomes and it is
important that the administration of certain provisions within the Bill do not take resources away from delivering improved outcomes for communities.”

Moray Council, North Ayrshire Council and South Lanarkshire Council also raised the issue of more resources, Moray stating that: “The Bill is not clear about the need to develop community capacity of groups particularly the more disadvantaged to take responsibility for assets and to participate in services that affect them and their communities. To implement the Bill effectively will require Public Sector authorities to look at additional resource to effectively support the required capacity building.”

Community Planning Aberdeen were positive about the potential impact: “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.”

The Accounts Commission for Scotland and Auditor General stated that: “The proposed introduction of a range of new rights for communities will mean that many public sector organisations will need to establish new administrative systems and processes to support these changes, for example to deal with community participation requests or right to buy assets. This will have resource implications for the bodies concerned. More significantly, there will also need to be a willingness by public bodies to adopt fundamentally different ways of working with communities in the redesign and delivery of public services. Implementing the proposals contained within the Bill may challenge current ways of working within and across organisations and raise legal issues which may not be simple to resolve.”

Third sector organisations highlighted a number of potential benefits for the public sector. Scottish Federation of Housing Associations stated that: “Public sector organisations will now have other partners to share some of the onerous tasks such as managing Community Planning Partnerships: conversely, they may feel that some of their control may be lost and public bodies may find this a disadvantage. There may, however, be inconsistencies between local authorities in how ‘power’ is shared, and how they are able and/or willing to deal with the potential for increased community involvement. The authorities will also have to take on new duties such as establishing, managing and maintaining the Common Good Register, and managing participation requests.”
Development Trusts Association Scotland stated that the Bill: “requires significant culture change within large parts of the public sector. This is unlikely to be easy or quick, but the Community Empowerment Bill has the potential to give out a serious and important message about Scottish Government intent. The Scottish Community Development Centre made similar points, noting that the: “challenge for organisations that continue to operate a traditional, top-down, consumer model, and those that, to date, have not been committed to community planning/community engagement. For such bodies, the Bill may well appear to be disadvantageous as it may be seen as a potential distraction or obstacle to their ability to meet centrally driven targets.”

Engage Renfrewshire highlighted the asset transfer provisions: “The Bill offers the potential for statutory organisations to release the potential of underused and unused assets. This will enable public sector agencies to divest itself of the management and maintenance of assets for which it has no productive use, which would be a saving to public expenditure. More importantly, assets taken over by the community have the potential to strengthen the capability of the third sector to deliver activities and services either independently or as part of a community planning partnership.”

Oxfam stated that it: “believes there is significant potential to improve the Bill in relation to Community Planning. The Policy Memorandum states local outcomes improvement plans should “provide a clear plan for place, focused on prevention and reducing inequalities.” Yet the Bill provides no comfort or guarantee that this will be the case. We suggest that as well as core duties for CPP partners to participate in CPPs, the Bill needs to ensure that the core purpose – and starting point – of CPPs should be to strengthen their engagement with the local community.”

Glasgow and West of Scotland Housing Associations noted that: “In our experience, public sector organisations often perceive these potential benefits as disadvantages. Framed in this way this, the key disadvantages might include: the need to relinquish control to the Third Sector and to communities themselves; and the need for a top-down and extensive culture change in public sector organisations.”

The Glasgow 3rd Sector Forum stated that: “Public sector organisations may need to disinvest in some services in order to re-invest in more preventative, co-produced and community oriented services. It will need to balance responding to ongoing priorities with facilitating a shift to a more preventative approach. Resources will be required by the Public Sector (and others) if we are to address culture change and staffing issues.”

Steve Rolfe noted that “there is relatively little robust research evidence which demonstrates savings as a result of community participation. However, the research review conducted by the Office of the Deputy Prime Minister in 2005 (‘Improving delivery of mainstream services in deprived areas – the role of community involvement’) suggested that the process benefits of community
involvement (e.g. better local knowledge, better access to services, etc.) feed through into reduced unit costs of service provision, and reduced costs in other aspects of service provision such as lower housing management costs through reduced tenant turnover."

Finally, UNISON Scotland raised a point no other submission covered – whether community empowerment is “a way to deliver services more cheaply. Where outsourcing services has claimed to save money it has been through cutting jobs, wages and the terms and conditions of the staff who deliver those services.” UNISON went on to state that: “Despite concerns raised by UNISON during the earlier consultations the workers, who currently deliver services on/in the land and building that community groups will have the right to ask to takeover, are not mentioned in the Bill. There is a big difference between a community taking over unused public buildings and land and putting then to public benefit than for example taking over the health centre, library or swimming pool. UNISON is also concerned that the staff who currently deliver services could be replaced by untrained volunteers. There needs to be much more clarity about how this will impact on services and the staff who work there.”
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?

As noted under Question 1, many submissions raised similar issues in response to these two questions – chiefly around issues of the capacity of more disadvantaged communities to take advantage of the Bill.

Development Trusts Association Scotland highlighted two issues: “one of ensuring the sufficient availability of funding and resources which support the activities covered within the Bill, and secondly, as the question suggests, ensuring that the right kind of information, advice and support is available to, where necessary, build the capacity of community anchor organisations to take advantage of the provisions.”

SCVO noted that: “The ability of communities to take advantage of the provisions in the Bill can be shown from the many successful community projects which have already been taken forward. Significant and challenging projects from North Harris to Cassiltoun, demonstrate the scale and diversity of successful projects that have been achieved in communities of all types. However, there are also communities that have been unable to achieve their objectives. The reasons this happens are complex and can range from financial problems to volunteer fatigue. If we wish to see more success, then creating the right conditions for communities to thrive should always be the priority and there are a number of practical ways this can be achieved.”

Inclusion Scotland stated that: “Disadvantaged and marginalised communities, including disabled people, are less likely to be able to take advantage of the opportunities afforded by the community right to buy, and this is likely to exacerbate inequalities between them and more well-resourced communities. The Bill does not make any specific mention of Equalities considerations. Nor do the proposals offer any level of support to marginalised communities which would enable them to engage with the Community Planning process. In addition marginalised, fractured and impoverished communities will, by definition, have fewer assets, or assets of lower quality, in their areas, which will in turn be harder and more expensive to manage and maintain.”

Many submissions from the third sector, and from the public sector, raised the issue of Participatory Budgeting. The Poverty Alliance stated that: “including participative budgeting in the Bill would help further empower communities. CPPs should be required to set aside a percentage [1%] of their annual budget to be decided on through community participation.” Others called for 10% to be set aside.

The Scottish Community Alliance again highlighted the differences between affluent and disadvantaged communities: “All communities are different, have widely varying capabilities and levels of capacity with which to take advantage of opportunities as they present themselves. There is well researched
evidence to show that when resources are scarce, those communities with ‘sharp elbows’ end up with the lion’s share of what is available. Given the absence of a level playing field in this respect and in the interests of supporting those communities where need is greatest, there is going to have to be substantial investment in compensatory measures. But this is not just about resources – although that is important – it is as much, if not more so, about how these resources are allocated.” SCDC, Carnegie, Voluntary Health Scotland and others made similar points.

Public sector bodies also made similar points. Argyll and Bute Council noted that: “Communities across Scotland are likely to be encouraged by the provisions of the Bill but in many instances, depending on the nature and complexity of the asset in question, they are likely to require additional professional support to develop business cases or funding applications. Future sustainability of large scale assets is also of critical importance and although community activists can support the initial thrust to secure and manage an asset, it is questionable whether this can be sustained in all instances particularly when key individuals move away from an area or their ability to continue to support the project diminishes over time. Therefore, particularly with respect to larger and complex transfers of assets, the long term sustainability of proposals should be investigated thoroughly at the outset.”

North Ayrshire Council also noted the issue of resources: “Support for groups and organisations to build their own capacity and aspirations is a basic requirement, and needs to come from the public and third sectors. Resources have been reduced through the process of public sector reform and are often insufficient to effect lasting change in communities.”

Again under this question, submissions highlighted the National Standards on Community Engagement. HIV Scotland stated that: “We support proposals by Oxfam, Barnardos and the Poverty Alliance to renew existing national standards for community engagement. We agree that the Bill should enable Ministers to create statutory regulations for the engagement and empowerment of communities, which all public bodies must follow and regularly report upon. We also believe that a key part of the standards should focus on empowering communities of interest rather than just those of place and are supportive of proposals to require Community Planning Partnerships to adhere to the Standards when they are creating local outcomes improvement plans.”

Children in Scotland made the point that: “there are groups and individuals who are detached and disengaged from effective engagement with community structures and that they are likely also to be those who experience marginalisation in other aspects of their lives. It is should not be a case of ‘training’ such people to fit in with structures largely devised and driven by large bureaucratic bodies, but ensuring that systems are accessible, enabling and, critically, can show that community participation is not a tokenistic compliance with a statutory duty but can bring about positive change.”
Volunteer Scotland highlighted that: “The success of the Bill, and community empowerment more generally, is built on the assumption that individuals and communities can/will do more on a voluntary basis to empower their community – take on assets, join representative bodies; deliver services and activities locally – but the evidence tells us this is unlikely to happen. The Bill needs to recognise this assumption and the facts of Scotland’s declining volunteer numbers. In this context much, more needs to be done to support individuals and communities to participate and tackle inactivity.”

Community Planning Aberdeen made the point that “the community” does not “always speak with one voice”, and that: “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.”
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?

The summary of evidence for this question has been divided by the eight parts of the Bill.

**Part 1 – National Outcomes**

Part 1 received limited comment compared to other parts of the Bill. Dr Pugh and Dr Connolly stated that: “in relation to Part 1, consideration could be given to strengthening ministers’ and / or local authorities and public bodies to develop national outcomes in genuine partnership with local community representatives, such as through participatory budget-setting, consulting citizens’ juries on policy priorities or holding online referendums in relation to these matters.”

UNISON Scotland made detailed comment on Part 1, focussing on the Scotland Performs Website, and comparing it to the Virginia system: “Scotland Performs has surface similarities to Virginia Performs but is nowhere near as extensive in terms of data or analysis. The Virginia site offers both easy to read graphics for a range of geographical and subject areas for those looking for snapshots as well as explanations/discussions of issues and extensive data for those seeking wider information or wishing to do their own analysis. Scotland Performs is not the “go to” place for data on Scotland or the delivery of its services nor has it become a source of debate or discussion.”

Voluntary Action stated that Part 1: “needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre. In order for a participatory approach to be successful the process for setting national outcomes needs to be simple and done in plain English that people in communities can relate to. Throughout this response we are calling for the National Standards for Community Engagement to be adopted in this regard to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.” Glasgow third sector forum raised similar points on consultation.

The Accounts Commission and Auditor General made a number of comments on Part 1, including that “if the commitment to set national outcomes is intended to provide greater clarity about trends in national performance, it is important to recognise that national outcomes can mask significant local variation in performance. Given this, it would be important that any national indicators that are set help assess how reductions in the wide inequalities of outcomes (health, life expectancy, educational attainment, etc.) that persist across Scotland are being addressed.”
Part 2 – Community Planning

Part 2 received a range of detailed comments from across all sectors. Many submissions highlighted problems with the current system of community planning, especially in relation to community involvement. Others sought clarity regarding how the new provisions would work with other existing legislation, including the status of existing community planning partners.

Perth and Kinross Council focussed on accountability, and stated that: “The accountability of individual CP partners remains a critical success factor for Community Planning in Scotland. We recognise that accountability lines can never be simple in a world of complex public service requirements. There is insufficient detail about accountability and reporting requirements on CP partners and how these would be strengthened in practice to ensure a shift of emphasis away from process (attending meetings, contributing to the drafting of the SOA, etc) and towards effective collaborative action focussed on place based preventative delivery which improves outcomes for communities. It is not clear how new reporting mechanisms would be monitored, or intervention/enforcement would be affected in relation to CP partners which did not meet their new accountabilities.”

Argyll and Bute Council questioned “in what way the reference to partners in community planning impacts the provision for the council to be the lead in the CPP as laid out in the Local Government Act 2003. It would also be beneficial for the definition of terms such as community planning in section 4.2 to be written in a way that is meaningful and understandable for the public.”

Glasgow City Council also raised the issue of leadership: “Whilst the change in duties addresses perceived problem of lack of accountability of other public bodies for their contribution to Community Planning, the question arises as to whether this new formulation alters the role of local authorities in Community Planning. On one reading the new duties offer a shared leadership model. However, how will this work in practice, if partners don’t agree roles and responsibilities. In addition does it meet the test of accountability?”

The Accounts Commission and Auditor General also covered this issue: “The Bill seems silent on any community leadership role of a local authority, given its repeal of the duty on a local authority to facilitate community planning in the 2003 Local Government in Scotland Act. In our response, we stated that “it is difficult to predict what might happen were the specific duty on councils to ‘initiate, facilitate and maintain’ the community planning process to be repealed”. Similarly, Portmoak Community Council highlighted the “misuse of the word ‘outcome.’ Its dictionary definition is ‘result or consequence’ yet that is clearly not what it means in Part 2. It appears to be used as a synonym for ‘objective.’ Yet in part 3 it appears most of the time to be intended to convey its dictionary meaning. The clarity of the drafting would be much improved if
the word ‘outcome’ were to be avoided and another word, appropriate in the context substituted.”

On the issue of sharing budgets, both Angus CPP and NHS Tayside noted that: “we have no difficulty with the concept of CPP members challenging each other’s expenditure, but to give the CPP powers actually to stipulate the sum to be spent by each partner is a step too far.”

In terms of community involvement in CPPs, Voluntary Action Scotland argued that “In order to secure the input from community bodies that is necessary to inform community planning there needs to be a strong community capacity building element, however, this does not appear to be present in the current iteration of the Bill. The duty on Community Planning Partners should extend to beyond merely securing input from community bodies to pro-actively developing the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process. … The language still leans towards top-down involvement rather than bottom-up processes, involvement is on the terms of the statutory agencies, at the very least we would be advocating guidance on the Bill once enacted to define more clearly what constitutes ‘reasonable effort’.”

Dollar Community Council went further, proposing that the Government: “develop statutory orders to compel Local Authorities to heed the wishes of local communities within the parameters laid down in current and future planning regulations. The bill must also include an ombudsman to which Community Councils may turn when these duties are not properly performed because it is felt that, based on our evidence, the Committee should not underestimate the changes needed to counter the ‘top-down’ inclinations and culture of present-day planning departments.”

A large number of submissions made suggestions for additional bodies, or groups of bodies, to be included in CPP arrangements, or to be consulted:

- Many submissions (including Glasgow third sector forum, Highland Council, and CO-Cheangal Innse Gall), suggested the third sector, specifically the third sector interfaces, should be included as community planning partners.

- Children 1st suggested that children and young people should be consulted.

- The Scottish Federation of Housing Associations suggested that the Bill must overtly mention housing associations and co-operatives as community bodies

- Scottish Enterprise and Scottish Council for Development of Industry suggested consultation/inclusion of businesses.
• The Community Justice Authorities suggested various justice bodies be included.

• The Regional Transport Partnerships suggested that they should be included as governance bodies.

• SportScotland suggested that it should be removed.

Part 3 – Participation Requests

Familiar issues were raised in submissions on Part 3, chiefly to do with capacity of communities to take advantage of the provisions. A number of submissions also highlighted the lack of appeals process.

Oxfam stated that participation requests: “risk becoming the privilege of already empowered communities with greater capacity to access, navigate and resource such a process. Consideration should be given to how public bodies can provide clear information and potentially financial resource in relation to participation requests – particularly to deprived communities. Section 9 (3) (b) recognises that funds and resources may be necessary for ensuring the engagement of community bodies in community planning and we see no reason why this shouldn’t be the case in relation to participation requests. As such, the Bill should actively remove barriers to engagement. Secondly, there is no ability to appeal a decision should a participation request be rejected. This seems particularly strange given that a form of appeals and reviews are available for asset transfer requests (through section 58 and 59). We propose that an independent review process be included in relation to participation requests – with a clear route outlined.”

Many others made comment on the appeals process, the Scottish Community Alliance stated that: “The absence of any appeal process leaves the balance of power with the public body which may ultimately discourage communities from exercising this right. It is however to be welcomed that there appears to be a presumption in favour of the community’s right to participate with a requirement on the part of the public body to explain it refusal.”

On resources, Children 1st made the point that: “The aspirations of the bill to meaningfully involve the community must be matched by resources; we are concerned that in reality this may not be accessible for certain members of the community. The bill does not mention how community members will be made aware of the opportunity for participation requests, or what support will be offered to those interested in participation requests. It is vital that this information is available in communities. Questions around the funding and information sharing of budgets of a successful participation request. It is unclear who will continue to provide the funds to run that service, if a community participation body is successful in applying to run a service, and if budget information will be shared and passed on. We are also unclear how this may impact tendering and strategic commissioning of services and would welcome clarity on this.”
Public sector bodies focussed comment on the definition of community bodies. Fife CPP stated that: “Unincorporated associations are not recognised as entities separate from their members. Consequently, such organisations cannot carry out acts, such as entering into contracts, owning property or engaging employees.”

NHS Health Scotland made a similar point: “Health Scotland’s experience of engagement with the third sector suggests that a focus only on community bodies with a written constitution (part 3 section 14) could miss the communities at the sharpest end of deprivation and health inequalities with evidence south of the border suggesting that deprived areas have fewer charities and voluntary groups The picture concerning place-based policies and dimensions of equality was very usefully reviewed north of the border by the Equalities and Human Rights Commission.”

And on the status of ALEOs, South Lanarkshire Council stated that: “We note that Ministers can designate bodies as public service authorities if they are wholly owned by one or more public service authority, or deliver services on their behalf. However, we feel it is essential for the Bill to be explicit in terms of how Arms Length External Organisations (ALEOs) are to be included in provisions. Specifically, we would like clarity over who or what entity can agree or refuse requests when a service is being delivered on behalf of a health board or council. Could, for example, an attached ALEO be involved in the refusal, where they may have a conflict of interest?”

UNISON Scotland raised the issue of public sector workers: “The Bill needs to be much clearer about protections for those workers who currently deliver services on/in the land and building that community groups will have the right to ask to takeover. Public bodies should have the right to buy back assets at the original price if a community group decides to sell. Any groups which deliver public services should also be subject to the same Freedom of Information and Equalities duties as public bodies.”

**Part 4 – Community Right to Buy Land**

The RACCE Committee is due to consider whether it will take on stage 1 scrutiny of Part 4 of the Bill at a meeting in early October 2014. Therefore, comments on Part 4 have not been included in this summary of the submissions for the LGR Committee. A number of submissions focussed on the detailed reforms proposed in Part 4.

**Part 5 – Asset Transfer Requests**

Similar points were raised in response to Part 5 as in the response to Part 3. One additional major theme was the call from a large number of submissions for a national Asset Register.
Carnegie stated that: “We would like to see the introduction of a national asset register used by all public sector bodies, which is publically available, accessible and can be modified over time. Community bodies may have an interest in a wide range of public sector assets and a publically available database of publicly owned assets which details where the asset is; what it is currently used for; which public sector body owns it and who to speak to about it would be very helpful.”

SCVO, The Alliance, DTAS, the Poverty Alliance and others made similar points. SCVO stated that: “We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.” The Alliance also noted that: “It is important to recognise, however, that the hard work for many community-led organisations will begin after an asset transfer has taken place, e.g. securing funding for refurbishment and ongoing costs. The ALLIANCE therefore believes that additional capacity building is required to ensure that community bodies taking on assets are adequately supported.”

NHS Tayside noted the possible challenges for the public sector: “The benefits to communities to exercise their rights to buy and request asset transfers have many potential positive outcomes. However, at a time when we are and will continue to be challenged financially, for most NHS Boards, the need to vacate property ‘not fit for purpose’ and secure optimal returns from the sale of such assets via the open market has been an absolute necessity. The right to buy should therefore be at the full market value of the land or buildings and through the open market.”

Highland Council made the point that “There is no current provision within the legislation if more than one community transfer body makes an asset transfer request (ATR) in connection with the same or similar piece of land/property either: a) at same time, or b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made). Provision/guidance will be welcomed for dealing with this eventuality either within the legislation or the regulations.

The Federation of Small Businesses commented that: “Firstly, if the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets. Secondly, it should be a statutory requirement that the asset owner must identify and consult with any business or organisation using the asset, prior to agreeing any transfer request. We are aware of concerns from businesses that this does not always occur and a change in ownership or conditions may have a huge impact on
businesses which rely on the asset. This might include assets such as parks or open spaces, filling stations, halls, cafes/visitor centres or piers. Notwithstanding the business impact, problems arising from lack of consultation and agreement, can lead to community breakdowns, especially in small communities.

**Part 6 – Common Good Property**

Most submissions broadly welcomed the proposals in Part 6, although many questioned whether the provisions could have gone further, in particular in providing a definition of common good.

Glasgow City Council made this point, and stated that: “One of the main difficulties encountered by Local Authorities in dealing with Common Good issues is determining what actually constitutes ‘Common Good land’. The existing law on Common Good is obscure and uncertain due, mainly, to the lack of legislation in the area and the absence of definitive and clear case law. The Bill does not attempt to define ‘Common Good land’ and no guidance is given as to which assets ought to be included in the Register.”

SOLAR made three requests for clarification:

- “How and in what circumstances moveable assets held on the common good account could be disposed of. The legislation is currently silent on this point

- Definitions of “alienable” and “inalienable” common good. The lack of clarity on these definitions has resulted in the Keeper of the Registers of Scotland refusing to issue a full title indemnity on the sale of any common good land, even where the property is clearly alienable.

- Ideally, the Bill would attempt to define common good rather than having to rely on less than perfect common law definitions.”

DR L D Neil made a number of specific points on Part 6: “In general terms, the greatest risk to the integrity of CGFs arises from the activities or inactivity of local authorities (LAs). Insufficient time and effort has been spent in the past to administer CGFs in most Scottish LA areas in order to carry out the duties imposed on them since the Local Government (Scotland) Act 1973. In addition, councillors elected to an LA area are beset by the conflict of interest between their duty to the local authority and the duty of trusteeship of SGFs prescribed by the act. … It is noted that it is anticipated (Financial Memo.) that the costs to LAs of bringing the currently inadequate CGF registers up-to-date will not generate an additional cost to LAs. That is unrealistic given the work that will be involved in correcting the neglect of decades of LA failure to compile adequate and accurate registers.”

Highland Council and other local authorities/CPPs questioned the provisions on consultation: “The Highland Council has responsibility for administering ten different Common Good Funds (Cromarty, Dingwall, Dornoch, Fortrose and
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Rosemarkie, Grantown, Invergordon, Inverness, Kingussie, Nairn and Tain). In relation specifically to Community Councils, the current wording in the Bill would require Highland Council to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds. We would therefore strongly suggest that the wording be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Part 7 - Allotments

While only a relatively small number of submissions focussed on Part 7, some provided very detailed comment. The Scottish Allotments and Garden Society summed up its submission: “We are pleased that the Government has recognised that the existing legislative framework for allotments is complex, and consultation has shown strong agreement that it needs to be updated. We welcome the statutory protection of allotments in the Bill. However we are concerned that the Bill repeals the existing legislation and in doing so some of the protections for plot-holder and allotment sites contained in the provisions of the old legislation appear to have been lost. There is no duty on the local authority to provide suitable land from their existing stock or by lease or purchase. Without such a duty the aim of the Bill to strategically support allotments and community growing spaces cannot be fulfilled.

We hope that the following amendments to strengthen the current legislation will be accepted by the Local Government and Regeneration Committee. The detail in this document is from a working group of twelve members of SAGS who have discussed and researched it over the summer. Our response has been shared with the wider membership of the organisation which covers every region in Scotland.”

Nourish also provided detailed comment, including that: “At the moment this Part of the Bill is a strange mix of detail, timescales and reporting requirements. For example, the local authority is under an obligation to maintain waiting lists for allotments and to provide allotments. They must also issue a yearly report on allotments, waiting lists and the measures they have taken to provide allotments. However, the local authority is also under an obligation to prepare a food growing strategy within two years of the Bill coming into force. The strategy should also identify areas that might be used to provide allotment sites or other areas of land that may be used for community growing. This must be reviewed every 5 years but there is no requirement to report on it.”

The Scottish Community Alliance stated that: “However there are aspects of the old legislation that appear to have been lost. In particular the duty on local authorities to provide suitable land to meet demand from their existing stock or by leasing or purchasing new land does not appear in the new legislation and this will undermine the aim of providing better support for demand for allotments and community growing spaces. SAGS have raised a specific
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Concern about the lack of precision in the Bill when referencing the size of an allotment and have proposed that the Bill should refer to a normal plot as being 250 square meters (which can then be subdivided into halves or quarters to suit local circumstances)."

Some public sector bodies highlighted potential costs. Glasgow City Council stated that: “The Financial Memorandum attached to the Bill would put the Capital Invest required to comply with the Section 72 Duty to provide Allotments at £3.4m. Glasgow City Council’s own estimates are significantly higher. It is essential that the Financial Memorandum which accompanies the Bill makes adequate provision for the costs of implementing the provisions. It is also unclear whether conversion of existing green space to Allotments by the Local Authority constitutes permitted development.” And, Aberdeen CPP noted that: “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.”

Finally, the Glasgow Third Sector Forum recommended: “adding a requirement to include a proportionate number of accessible allotments in any new allotment, for use by wheelchair users and buggies. Accessibility aspects would include wide, all-weather decking and raised planting areas. For all existing allotments, we recommend that accessibility be phased-in over five years from the date of the implementation of the Bill. This equalities-based suggestion would clearly need to be resourced, and public bodies should be encouraged or required to make provision for this.”

Part 8 – Non-Domestic Rates

Again, this Part produced limited comment from most submissions. Reform Scotland highlighted its own Local Taxes report, and stated that: “Whilst the ability to create localised relief schemes to reflect local needs and support communities proposed by the bill is to be welcomed, we would like to see far greater decentralisation. Reform Scotland believes that each tier of government should be responsible for raising the majority of what it spends. Councils in Scotland today arguably have no real control over raising the tax revenue they spend (due to centralisation of NDR and the council tax freeze) despite being responsible for a significant proportion of expenditure.”

While welcoming the principle of local discretionary relief, and calling it “a welcome acknowledgement of the need to keep down costs for retailers and other businesses”, the Scottish Retail Consortium strongly warned against “the provisions within the Bill being amended to allow councils to increases rates bills, for example in the form of a local discretionary supplement. Our research shows that one in every eleven retail premises is empty, and anything that makes it more expensive or more difficult for retailers to invest will only exacerbate this problem.”
The Federation of Small Businesses noted that it was “cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority. In England, where similar powers already exist for local authorities, there has been virtually no introduction of relief. A recent report by the FSB in Wales, also found that where local authorities have power to grant relief (using discretionary rates relief), only half had granted any discretionary relief in the previous 3 years.”

In terms of local authorities, East Ayrshire Council and others raised possible issues with the proposal that local authorities fully fund their own relief schemes: “This will place the financial burden of the local relief scheme on the Council with the total contribution to the National Pool being unaffected by those local schemes. There is therefore concern that some of the national schemes currently in place (for example, Small Business Bonus Scheme, Fresh Start, New Start) may either end or be significantly amended by Scottish Government. Accordingly, should the Council wish to continue such schemes for example, to help regenerate town centres by encouraging empty properties back into use, then it would be potentially at the Council’s expense. It would be important therefore that Scottish Government/national funding streams continued to be made available and accessible to support local authorities.”
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?

A high number of responses to Question 5 highlighted the lack of a published Equality Impact Assessment, and many raised issues about inequality of opportunity for different communities, that had been raised under other questions.

Inclusion Scotland stated that it “would like to see a much more robust Equalities Impact Assessment carried out which properly addresses the potential dangers that marginalised communities, such as disabled people, may face if recognition of community groups is granted to professional or already well-resourced groups at the expense of groups representing disadvantaged or equalities groups.” Argyll and Bute Council stated that: “In respect of the equality impact assessment that has been carried out, which concludes that the Bills provisions are neither directly or indirectly discriminatory in respect of age, disability, race, religion or belief, sex, sexual orientation or gender reassignment, it would be useful for this to be published for viewing.”

And, Unison Scotland stated that: “There needs to be recognition of the many different groups and individuals who want and need to access public services. There must be substantial protection service users, particularly those voices that are already less well heard in Scotland, from the well organised well off further controlling assets and influencing service delivery to suit their needs. The Equalities Impact Assessment of the Bill has not yet been published. This should be a fundamental part of the policy development process not an add-on once the main work has been done. It is impossible to see if this has been investigated and protections are in place without access to the assessment.”

Argyll and Bute also raised the issue of “island proofing”, stating that “it would be useful to understand how much of the bill has been “island proofed”, and to understand which aspects of the bill will produce a differential impact on the islands.” Similarly, Orkney Islands Council stated that: “There is very little in the assessment of impacts on island communities in the Policy Memorandum. As noted in our response to the 2012 consultation, the protected characteristics enshrined in the Equality Act 2010 do not include the key equality consideration for island populations, which is geographical access. We would like to see this addressed as a matter of course in all assessments of impacts on island communities.”

Children 1st noted that: “this bill does not mention children and young people and their role in community empowerment. The Children and Young People (Scotland) Act 2014 places duties on Scottish Ministers to take UNCRC requirements into account, and we therefore consider that a Child Rights Impact Assessment should have been conducted to assess the bill’s impact on the rights of children.”
Community Health Exchange made detailed comment on inequalities: “Average health in Scotland continues to improve while health inequalities continue to increase. NHS Health Scotland’s recent review of health inequalities highlights the stark impact on life expectancy and health outcomes between the most affluent and least affluent communities in Scotland. The indicators show social, economic and health inequalities will continue to increase if cuts in welfare provision continue to be implemented. The NHS and the community and voluntary sectors are already experiencing an increase in demand on services as a result of austerity measures. ... There is real concern that implementation of the Bill as it stands will exacerbate health inequalities with stronger and more powerful voices prevailing from already organised and more affluent communities. It is expected that more affluent areas will mobilise further to take up new opportunities that the Bill’s offers. Therefore, priority attention and resources should be allocated to communities that have greater challenges.”

South Lanarkshire Council made a similar point, and indicated that there should be a specific duty on CPP partners to reduce inequality and focus on early intervention and prevention.

The CLD Standards Council for Scotland stated that: “We have highlighted throughout these comments that there are significant risks that the Bill’s provisions inadvertently increase inequalities between communities. These are not primarily inequalities relating to the "equalities groups" considered by the Equality Impact Assessment. However, it seems likely that in some instances the members of “equalities groups” are over-represented in geographic communities that are economically and socially disadvantaged, and/or that the effects of inequality experienced by members of “equalities groups” are exacerbated by living in disadvantaged areas. These are likely to be important factors in developing realistic strategies for supporting community empowerment.”

SEPA and others highlighted a possible lack of analysis of the sustainable development impact of the bill: The Policy memorandum provides a ‘light touch’ assessment of the sustainable development impacts of the Bill. The Bill has the potential to make a positive contribution to sustainable development and there may be an opportunity for government to provide regulations and/or guidance to help all parties maximise these opportunities.”

Linked to this, Keep Scotland Beautiful made the point that: “We would also want to be reassured by the Scottish Government that the Bill, and its component provisions, will, support and strengthen low carbon measures being progressed in the context of the Climate Change (Scotland) Act 2003. We believe the provisions on participation requests, right to buy and asset transfer could cause changes in land use or public service delivery, and an increase in greenhouse gas emissions if the provisions of the Climate Change (Scotland) Act 2003 are not taken into account.”
This Briefing summarises and analyses the key provisions in the Community Empowerment (Scotland) Bill, introduced in the Parliament on 11 June 2014. The Bill seeks to reform areas such as community planning, community right to buy land, involvement of communities in public service delivery and communities taking on public assets.
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EXECUTIVE SUMMARY

The Community Empowerment Bill was introduced in June 2014. The Bill is the result of a number of consultations and other preparatory work, and is set within the Scottish Government's wider programme of public service reform.

According to the Government, the Bill “reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.”

Part 1 aims to provide a statutory basis for the use of “National Outcomes”.

Part 2 contains a number of reforms to the system of community planning.

Part 3 provides for a process to allow community bodies to become involved in delivery of public services.

Part 4 makes a range of changes to the community right to buy land.

Part 5 provides for a process to allow community bodies to take on assets from the public sector.

Part 6 makes a number of reforms to the system of common good.

Part 7 is concerned with allotments.

Part 8 allows local authorities to set their own reliefs for business rates.

This briefing examines each part of the bill in turn, and looks at the financial implications, and sustainable development issues.
BACKGROUND AND POLICY CONTEXT

THE BILL AND THIS BRIEFING

The Community Empowerment (Scotland) Bill (“the Bill”) was introduced in the Scottish Parliament on 11 June 2014. The Parliament has agreed to designate the Local Government and Regeneration Committee (“LGR Committee”) as the lead committee on the Bill.

The Explanatory Notes that accompany the Bill state that:

“The Bill reflects the policy principles of subsidiarity, community empowerment and improving outcomes and provides a framework which will:

- empower community bodies through the ownership of land and buildings and strengthening their voices in the decisions that matter to them; and
- support an increase in the pace and scale of public service reform by cementing the focus on achieving outcomes and improving the process of community planning.”

The concept of a Community Empowerment Bill (then called a “Community Empowerment and Renewal Bill”) was first introduced in the SNP’s 2011 Scottish election manifesto (SNP 2011). In June 2012, the Scottish Government launched an exploratory consultation on the proposed Community Empowerment and Renewal Bill (Scottish Government 2012b), to which a total of 447 responses were received (referred to as “the 2012 consultation” in this briefing).

This exploratory consultation, and the analysis of consultation responses (Scottish Government 2012c) then informed a further consultation in November 2013 (Scottish Government 2013a). A total of 424 responses were received in response to this consultation and another analysis of the consultation responses (Scottish Government 2014b) was prepared (referred to as “the 2013 consultation” in this Briefing).

The Bill is part of a wider programme of public service reform in Scotland, which was started by the Christie Commission’s Report on future delivery of public services in Scotland (Scottish Government 2011) (“the Christie Commission report”), and includes many elements of reform that have been brought about through other pieces of legislation and through non-legislative change.

This Briefing is intended to help inform Parliamentary scrutiny of the Bill at Stage 1, by summarising and analysing the key provisions in the Bill, and the potential financial impact of the Bill.

LOCAL GOVERNMENT AND REGENERATION COMMITTEE SCRUTINY

The LGR Committee considered and agreed its initial approach to the Bill on 25 June 2014. It launched a general call for written evidence (LGR Committee 2014a), and the Convener of the Committee wrote to the Minister for Local Government and Planning (LGR Committee 2014c), setting out a number of questions and requests for clarification on the Policy Memorandum (PM), stating that:

“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 Government responded to the Committee’s questions on 1 August (LGR Committee 2014d) (referred to in this briefing as “the Government’s letter of 1 August”). In his cover letter, the Minister for Local Government and Planning responded to the Committee’s general point about the brevity of the Policy Memorandum:

“We recognise the issue you raise about making it easier for stakeholders to provide comment on the draft provisions and welcome the opportunity to provide clarification. One of the concerns raised to us through our extensive engagement with stakeholders was that people can be put off by lengthy documents with a great deal of detail. We aimed, therefore, in the Policy Memorandum to provide a succinct and broad overview of the policy underlying the Bill as a whole and each Part individually.”

The Committee’s call for written evidence closed on 5 September 2014, and 157 submissions were received. SPICe will prepare analysis of the submissions separately to this Briefing. The analysis will be made available to the Committee and published in late September.

The Committee intends to take oral evidence from stakeholders and those with an interest in the Bill over the period September to November 2014, including visits and external committee meetings outside of Edinburgh. Full details are available on the Committee’s website (LGR Committee 2014b).

PART 1: NATIONAL OUTCOMES

In 2007, the Scottish Government introduced a new outcomes-based National Performance Framework (NPF). In June 2008, the Government launched Scotland Performs, a website designed to present information on how Scotland is performing against the range of indicators outlined in the NPF. Detail on how the NPF works, its structure, and individual targets and indicators can be found on the Scotland Performs website (Scottish Government 2014e) and in a 2012 SPICe Briefing (Campbell 2012).

Part 1 of the Bill places a duty on Scottish Ministers to develop, consult on and publish a set of National Outcomes for Scotland, which must be reviewed at least once every five years. The Bill also provides that Scottish Ministers must publish regular reports on progress on the National Outcomes, although does not specify a timescale for these reports. The Bill does not provide for a specific consultation with the Parliament, although in the 1 August letter, the Government stated that the Parliament will be able to use the published information referred to above to hold Ministers to account (LGR Committee 2014d).

The Bill does not prescribe what the National Outcomes should be, nor the structure of any future NPF, leaving decisions on these matters to future governments. There was a high degree of support for this proposal in the Government’s second consultation. The proposal was also welcomed in the Finance Committee’s final report on the 2014-15 Draft Budget (Finance Committee 2013).

The Financial Memorandum (FM) states that Part 1 will impose minor costs on the Scottish Government, but that these will be met from existing resources.
PART 2: COMMUNITY PLANNING

CURRENT FRAMEWORK

Community planning was established in legislation by Part 2 of the Local Government in Scotland Act 2003 (“the 2003 Local Government Act”). This placed a duty on local authorities to initiate, maintain and facilitate a process by which public services are planned and provided in the local authority area. “Core partners” are under a duty to participate in the process. There was no statutory requirement to establish Community Planning Partnerships (CPPs), although it was an expectation in supporting statutory guidance (Scottish Executive 2004). At present there are 32 CPPs in Scotland, one for each local authority area.

Part 2 of the Bill proposes a number of reforms to the system of community planning. This briefing first looks at the wider reform of community planning that has been underway since the Christie Commission reported in 2011.

REFORM OF COMMUNITY PLANNING

Christie Commission and other reports

A range of reports in the last few years criticised the development of community planning since its introduction in 2003, especially in terms of the impact on, and involvement of, local communities. In June 2011, the Christie Commission published its final report (Scottish Government 2011) on the future delivery of public services in Scotland. The report stated that:

“The Commission heard a consistent view that the potential benefits of a local partnership approach are far from being fully realised; that there are significant variations in the effectiveness of community planning partnerships; and that, for the most part, the process of community planning has focussed on the relationships between organisations, rather than with communities.”

In March 2013, Audit Scotland published a report on Improving Community Planning in Scotland (Audit Scotland 2013), which concluded that:

“Partnership working is now generally well established and many examples of joint working are making a difference for specific communities and groups across Scotland. But overall, and ten years after community planning was given a statutory basis, CPPs are not able to show that they have had a significant impact in delivering improved outcomes across Scotland.

Our audit work in recent years has found shortcomings in how CPPs have performed. These are widespread and go beyond individual CPPs. Community planning was intended as an effective vehicle for public bodies to work together improve local services and make best use of scarce public money and other resources. Barriers have stood in the way of this happening. All community planning partners needs to work together to overcome the barriers that have stood in the way of this happening. For example, shifting the perception that community planning is a council-driven exercise, and not a core part of the day job for other partners.”

The Local Government and Regeneration Committee has returned to the topic of community planning regularly in Session 4, most notably in its 2013 report on Public Services Reform (LGR Committee 2013), which concluded that:
“… we share the view of the AC/AGS that 10 years of community planning has yielded little significant evidence of major improvements in public services. Like the AC/AGS, we also found major differences in perceptions about CPPs in terms of their impacts, outcomes, rates of progress, and above all levels of community engagement. We also note that this lack of progress has had its greatest impact on some of the most disadvantaged communities in Scotland.”

**National Community Planning Group and the Statement of Ambition**

In response to the Christie Commission report, the Scottish Government undertook a review of community planning. Following that review, the Scottish Government and the Convention of Scottish Local Authorities (COSLA) published a Statement of Ambition (Scottish Government 2012a), which sets out how CPPs should drive public service reform at local level. The Government also established a National Community Planning Group, which was chaired by Pat Watters, former President of COSLA.

Details about the group and its membership are available on the Government’s Community Planning webpages (2014a). Annex A to the Government’s letter of 1 August sets out a summary of the Group’s work and the development of community planning since 2012. This includes work on joint resourcing, prevention, community engagement and co-production. The Government goes on to describe the “broad programme of reform” that is taking place without the need for legislative action. But, it states that legislative reform is required in certain areas.

**PROPOSALS IN PART 2 OF THE BILL**

The proposals in this Part of the Bill replace the equivalent provisions in Part 2 of the 2003 Act. Part 2 of the Bill provides a statutory basis for CPPs, so that “community planning is the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the local authority area.” (Policy Memorandum)

**Defining community planning**

Section 4 defines community planning as “planning that is carried out with a view to improving the achievement of outcomes in relation to the area of the local authority resulting from, or contributed by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1.” These outcomes must be consistent with the National Outcomes set out by Scottish Ministers. Schedule 1 lists all of the bodies considered to be “community planning partners”, which consists of:

- colleges
- the police
- health boards
- enterprise agencies
- integration joint boards, established by the Public Bodies (Joint Working) (Scotland) Act 2014
- National Park authorities
- regional strategic bodies on further and higher education
Putting community planning on a statutory basis, and requiring participation from all partners, not just local authorities, has long been considered a way in which community planning could be improved. In its report on public service reform, the LGR Committee commented that:

“COSLA argued in its written submission and in oral evidence that an overall statutory duty on other public sector partners to participate in community planning would strengthen the ability to deliver public services in new ways, through greater partnership working. COSLA called this a “paradigm shift”. We consider this term to be misguided. We do not believe that a proposed statutory duty will be enough in itself to ensure that all public bodies participate effectively in community planning, and deliver the public services communities want to see.” (LGR Committee 2013)

But, in general there appeared to be support for this proposal in responses to the Government’s 2013 consultation (Scottish Government 2014b). Concerns were expressed on issues such as how both the outcomes and the priority of those outcomes would be decided upon within CPPs, with respondents suggesting local authorities would continue to play the key role. Others were concerned that the process would still be “top-down” and would still not give the community much say in determining outcomes.

Local outcomes improvement plan

Sections 5, 6 and 7 are concerned with the local outcomes improvement plan, defined as: a plan setting out each local outcome to which the community planning partnership is to give priority with a view to improving the achievement of the outcome, a description of the proposed improvement in the achievement of the outcome, and the period within which the proposed improvement is to be achieved.

The plan must be reviewed “from time to time”, and the CPP must publish an annual report on its progress towards achieving its stated outcomes.

The Policy Memorandum confirms that local outcomes improvement plans are the equivalent of Single Outcome Agreements, currently used by all CPPs. But, it does not explain why new terminology has been used in the Bill.

Participation of community bodies

As well as public bodies, the Bill requires that CPPs must “make all reasonable efforts to secure the participation” of those community bodies it considers are “likely to be able to contribute to community planning”. In its letter of 1 August, the Government confirmed that this provision:

“does not prescribe a process which CPPs should adopt for engaging with community bodies. These are decisions for CPPs and partner bodies to take locally, as they are
best placed to determine which approach is most suitable for the particular circumstances of each occasion.” (LGR Committee 2014c)

There is also specific provision for community bodies to be consulted in preparation of the local outcomes improvement plan. Again, the Bill and accompanying documents are not prescriptive about which bodies should be consulted.

The involvement of communities and community bodies in the process of community planning has been a key thread running through the work of the Local Government and Regeneration Committee in Session 4 in its work on public service reform and on regeneration. In its report on Strand 3 of its public service reform inquiry, the Committee stated that:

“We have not found evidence that successes are being collated and replicated systematically. We have found some apparent contradictions amongst our witnesses, especially in terms of perceptions on the rate, scale, nature, direction and levels of community engagement in decisions on PSR, particularly within and across CPPs. Ten years on, there is a consensus that insufficient progress has been made by CPPs.

We found varying degrees of community engagement in partnerships generally, and CPPs in particular. We emphasise that there are also significant differences in perception about the levels and effectiveness of community engagement.” (LGR Committee 2013)

Similarly, concerns were also raised in responses to the Government’s 2013 consultation (Scottish Government 2014b) that providing statutory underpinning could actually marginalise communities even further, as it would reinforce the public sector partners as principal partners, and others as less important. Another dominant theme in this consultation was the need for investment in community capacity building, if all communities were to take full advantage of the opportunities in the Bill.

**Duties on CPP partners, governance**

The remainder of Part 2 contains a number of other provisions on community planning. Section 9 describes how partners must participate in the community planning process, including a general provision that each partner “must co-operate” with the other partners, and also specific provision on sharing resources. Each partner must contribute “such funds, staff and other resources” as required by the CPP. There is no further detail about how this will operate, and it is assumed that it is for each CPP to come to its own arrangements, based on the guidance issued under section 10.

As well as the general duty on all partners to “participate” (section 4), section 8 of the Bill (on Governance) also places specific responsibilities on a number of partners to ensure that the partnership operates efficiently and effectively. Again, limited detail on what this would involve is provided in the accompanying documentation and it appears to be for CPPs and individual partner organisations to put the legislation into practice, again following any guidance issued under section 10.

**FINANCIAL IMPLICATIONS**

The FM states that there will be minimal additional costs on public bodies involved in community planning, as most bodies concerned already participate in the process. Local authorities currently incur costs to organise CPPs and the FM states that the Bill does not place additional duties on them in this regard that may lead to additional costs. Beyond the administrative costs of running and participating in CPPs, the proposals in the Bill may indirectly result in significant policy and service changes. This could lead to either additional savings (if for example
efficiencies are generated) or additional costs (if, for example, many more consultations are undertaken).

**PART 3: PARTICIPATION REQUESTS**

Part 3 sets out how a “community participation body” can make a request to a “public service authority” to participate in a process to improve an outcome of a public service, and how the public sector should deal with these requests. Part 3 is similar in structure and intention to Part 5, on Asset Transfer Requests.

**BACKGROUND**

The Policy Memorandum states that:

“There is a strong history of the public sector engaging with communities across Scotland. In particular, local authorities have used a variety of engagement methods over the years and have promoted the use of tools like the National Standards for Community Engagement […] The Scottish Government sets clear expectations that all public sector organisations must engage with communities and support their participation in setting priorities and in the design and delivery of services.”

However, evidence presented by the LGR Committee, Audit Scotland and others would suggest that the level of meaningful public engagement by local authorities and CPPs varies widely across Scotland and while there have been successes, in many areas there has been a lack of progress (LGR Committee 2013).

The Policy Memorandum goes on to state that Part 3 of the Bill is not intended to replace current engagement activity by CPPs but is intended to “give community bodies an additional power to initiate that dialogue on their own terms, and a right to have their views properly considered.”

**DEFINITIONS**

For the purposes of this part, the Bill provides specific definitions for both the community and public sector bodies involved.

A “community controlled body” can be a corporate body or unincorporated, but must have a written constitution that:

- defines the community to which the body relates,
- includes membership rules which ensure the body is open to and controlled by the community,
- sets out its purpose, which must include promotion of a benefit for its community, and
- provides that any surplus funds or assets are to be used for the benefit of its community.

However, the term “community” is not defined in the Bill. The Explanatory Notes confirm that the community could be based on geography, interest or shared characteristics.

A “community participation body” is a body that can make a “participation request”. It can be either a community controlled body, a community council, or a body classed as a community participation body by the Scottish Ministers by order.
Finally, schedule 2 of the Bill lists the bodies to which a participation request can be made, known as “public service authorities”. These are bodies which are involved in providing or supporting public services. So, while local authorities, health boards, the police, etc. are included, bodies like advisory boards are not.

PARTICIPATION REQUESTS – PROCESS

The process for participation requests is set out below.

Participation Requests Process

The process for participation requests is set out in sections 17 to 25 of the Bill. In summary, the process will run as follows:

1. When a community participation body (or more than one body jointly) believes it can improve the outcome of a public service, it can make a participation request to the body (or bodies) that run that service.

2. In doing so, the community participation body will need to set out the outcomes it expects to achieve and its experience of the public service.

3. It is then for the public service authority to make a decision on whether to agree to the request – but the authority must agree to the request unless there are reasonable grounds not to do so.

4. Following a decision agreeing to the request, the public service authority must issue a decision notice outlining how the outcome improvement process will work.

The Bill does not define what the “reasonable grounds” are to refuse a request, although section 22 sets out that if a similar request has been made in the past two years it can be refused. In its letter of 1 August, the Government states that it is “difficult to outline at this stage” what such grounds for refusal might be, and that “It is appropriate to allow public service authorities a degree of discretion, and they will need to explain the grounds for any refusal.” Respondents to the Government’s 2013 consultation highlighted this provision as potentially giving local authorities too much leeway to reject any request (Scottish Government 2014b).

Although not set out in the Bill, the Policy Memorandum indicates that a participation request could be used by community bodies to “discuss with service providers how they could better meet the needs of users” instead of actually taking over, or being involved in delivery of the service.

Section 19 of the Bill requires local authorities to consider whether the participation request is likely to promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing, although it does not require them to consider all of these issues in the round, by considering any trade-offs or unintended consequences.

FINANCIAL IMPLICATIONS

The FM states that while there are likely to be costs for public service authorities in responding to participation requests, it is unable to assess the financial impact of this Part of the Bill, as:
“the costs will depend on how often community participation bodies use the provisions and at this stage it is difficult to forecast use across Scotland. The Bill explicitly allows public service authorities to invite community bodies to join existing processes, therefore limiting the need for additional costs.”

Although there are uncertainties associated with potential usage of this new provision, an FM would be expected to set out a range of possible scenarios with associated costings even when uncertainties exist. The FM does include an example of local authority costs associated with community engagement, which could act as a proxy for costs of a participation request. Depending on the circumstances of the consultation it might cost between £1,000 and £41,000 for a consultation (mostly staff costs). However, it has not been possible to scale this up given the wide range of possible scenarios involved.

PART 4: COMMUNITY RIGHT TO BUY

INTRODUCTION

Part 4 of the Bill proposes a number of amendments and additions to the Land Reform (Scotland) Act 2003 (“the 2003 Land Reform Act”). The Explanatory Notes state:

“Part 2 of the 2003 Act provides bodies representing rural communities with rights to register an interest in land with which the community has a connection. These bodies have a right to purchase that land if the owner is willing to sell it. Part 2 of the 2003 [Land Reform] Act sets out the land in respect of which an interest can be registered, and the procedure for registering an interest. It also sets out the circumstances in which the right to buy the land in respect of which an interest is registered arises and the procedures for exercising it (including procedures for valuation of the land, for appeals and for compensation).”

To date, 16 communities have purchased 21,004 hectares of land under Part 2 of the 2003 Land Reform Act (Scottish Government 2014d). The Registers of Scotland maintains the Register of Community Interests in Land (ROS 2014), and this shows that there are currently 171 Community Bodies with an interest in local assets across Scotland.

Post legislative scrutiny of the 2003 Land Reform Act, a summary of evidence, and a recent review into options for further land reform has informed the development of the Bill.

The Centre for Mountain Studies at Perth College UHI undertook Research on the Implementation of the Land Reform (Scotland) Act 2003, commissioned by the Scottish Parliament’s Rural Affairs and Environment Committee (2010a), the Executive Summary (Scottish Parliament Rural Affairs and Environment Committee 2010b) highlighted the legislation’s complex and resource-intensive administrative requirements, and noted that:

“Specific issues were raised concerning access to the electoral register, community body definitions, ballot turnout requirements and the definition of “community”. “Late” registrations are seen as a key “emergency” tool by community groups, and the majority of successful purchases to date have been “late”.”

The Scottish Government (2012d) published an Overview of Evidence on Land Reform which found that Lowland Scotland is an important area for community ownership, and community purchase should not solely be associated with the Highlands and Islands. It also found that the areas of land purchased have generally been small, often constituting specific facilities and/or buildings rather than larger land areas and estates; furthermore:
 “…not all communities are equally well placed to achieve the full benefits of land and asset ownership. In addition, without the right conditions in place, ownership can bring with it more risks than benefits.”

The Scottish Government announced the establishment of an independent Land Reform Review Group (LRRG) in July 2012, with a broad remit to:

- Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
- Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient, and independent communities which have an even greater stake in their development;
- Generate, support, promote, and deliver new relationships between land, people, economy and environment in Scotland.

The Final Report (Scottish Government 2014c) contains over 60 key recommendations and states that:

“It reflects the importance of land as a finite resource, and explores how the arrangements governing the possession and use of land facilitate or inhibit progress towards achieving a Scotland which is economically successful, socially just and environmentally sustainable.”

NATURE OF LAND IN WHICH INTEREST MAY BE REGISTERED

At present the right to buy provisions in Part 2 of the 2003 Land Reform Act (and secondary legislation¹) apply only to community bodies representing rural areas (i.e. with a population of less than 10,000). Section 27 of the Bill amends the definition of “registrable land” and the power of the Scottish Ministers to define “excluded land”, so that the community right to buy applies across Scotland. The majority (93%) of those who responded to this proposal in the 2013 Consultation (Scottish Government 2014b) agreed.

MEANING OF COMMUNITY

Section 34 of the 2003 Land Reform Act provides that the only type of legal entity that can apply to register a community interest in land is a company limited by guarantee. It also provides for the use of postcode units in order to define the community that a Community Body (CB) can represent. Section 28 of the Bill extends the types of body which may be CBs under Part 2 of the 2003 Act to include Scottish Charitable Incorporated Organisations (SCIOs) and any other type of body which Ministers specify in regulations; this is subject to certain provisions, e.g. that the SCIO must have not fewer than 20 members, that the majority must be members of the community, and that provision must be made for proper financial management. This section also gives Ministers a power to make regulations which prescribe other types of area by which a community may define itself. So, in summary, according to the Policy Memorandum, the bill makes it easier for communities to define themselves in a greater variety of ways than by postcode.

Of those who responded to the 2013 consultation’s proposals (Scottish Government 2014b), 81% agreed that other legal entities in addition to the company limited by guarantee should be

¹ Community Right to Buy (Definition of Excluded Land) (Scotland) Order 2009.
able to apply to use the community right to buy provisions. The main arguments against were that other bodies may not provide community protection and could lead to personal liability for their members.

Regarding more flexibility in the way that a community is defined, a broad range of opinions were expressed, including specific support for the use of settlements and settlement areas. The consultation states:

“It was commonly acknowledged that communities vary considerably and so flexibility in how they define themselves is sensible. However, in practical terms, the community will require to be balloted in order to exercise their right to buy and this may be a consideration in decisions on definition.”

Furthermore:

“The most common view expressed […] was that communities should be able to define themselves according to interest in addition to place. A multitude of examples was provided, a selection being: arts organisations; people with disabilities; fishing interest groups; railway preservation groups; ex-soldiers; wildlife preservation association; language group; ethnic group; people with mental health problems; church; and users of allotments.”

SECTIONS 29 – 47

The Government’s letter of 1 August states that sections 29 to 47 of the Bill make a number of changes to “the detailed procedures and requirements of the community right to buy process, including streamlining and increasing flexibility”; these sections are summarised below.

Section 29 extends the restriction on CBs modifying their memorandum or articles of association without Ministers’ consent from when they hold a registered interest, or own land to the period prior to registration.

Section 30 inserts a subsection that precludes Ministers considering any community support that is dated earlier than 6 months before the date an application to register a community interest in land is received.

Section 31 is lengthy, and relates to the procedure for late applications; the Policy Memorandum states that it replaces “the “good reasons” test for “late” applications with one which sets out clear requirements to be met by community bodies when submitting a “late” application”.

An application is deemed to be “late” when it is received by Ministers after the owner of the land has taken action to transfer the land but before missives are concluded, or an option to acquire is granted. Key amendments include:

- Allowing Ministers to request further information from the current owner to allow a decision on whether an application is “late”.
- Where further information is requested, extending the time that Ministers have to make a decision on whether an application is “late” from 30 days to 44 days.
- Removing the requirement to show “good reasons” for not submitting an application before land came on the market and replacing it with a requirement that such relevant work as Ministers consider reasonable was carried out by a person, or such relevant
steps as Ministers consider reasonable were taken by a person; relevant work and relevant steps are defined.

- Allowing Ministers to request further information from any relevant party within the relevant timescale.

The 2013 Consultation (Scottish Government 2014b) asked whether “communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy”. If so, “what changes should be made”? Of those who responded, 88% agreed that there should be a process for “late” applications, and a variety of comments and recommendations were made, including:

- The interests of the landlord and wider commercial bodies should be taken into account in addition to those of the community.

- Late applications should be avoided as far as possible by ensuring communities have information about future sales wherever possible.

- In urban areas in particular the process could become very complex with many late registrations and different community bodies in competition.

Sections 32 - 35 relate to evidence and notification of concluded missives or option agreements, and notifying Ministers of certain changes.

The 2003 Land Reform Act provides (section 51(2)(a)) that at least half of the members of the community must have voted or, if half of the members have not voted, the proportion which voted is sufficient in the circumstances to justify the community body buying the land. Section 36 of the Bill removes the reference to at least half of the members of the community voting and provides that the requirement is met if the proportion of the members of the community who voted is sufficient to justify the community body proceeding to buy the land. The 2013 Consultation (Scottish Government 2014b) shows that, of those who responded, 89% were of the view that “the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land.”

Section 37 of the Bill inserts a new section 51A into the 2003 Land Reform Act. It provides for an independent ballotter to undertake the community ballot. The Policy Memorandum states that:

“Scottish Ministers [will] arrange for this to be conducted by an independent third party, and […] meet the cost of this, making the community right to buy process easier for community bodies;”

Requirements on Ministers include providing the ballotter with a copy of the application, and other information as prescribed in regulations. This must be done within 28 days of the valuer being appointed. The CB is also required to provide the ballotter with wording for the proposition that they buy the land, together with other information as set out in regulations within seven days of receiving notification of the value of the land. The 2013 Consultation (Scottish Government 2014) showed that, of those who commented on the subject, 84% agreed that Ministers should organise and pay for the ballot.

Sections 38 – 42 relate to the provision of information and evidence relating to ballot results; Ministerial powers to review whether ballots have been properly conducted; the timescale for the conduct of the ballot; and timescale for payment by the CB.

Section 43 inserts a new subsection (1A) into section 60 of the 2003 Land Reform Act which requires the valuer to pass on any written representations about the value of the land (whether
by the landowner or the community body) to the other party and invite counter representations from that party. These views must then be considered while undertaking the valuation. It is considered that this process will increase confidence in the valuation.

The Policy Memorandum states that the Bill gives:

“Ministers discretion to allow them to recover the cost of the independent valuation from the landowner where the landowner has withdrawn the land from sale after the valuer has been appointed, thus deterring landowners from allowing the process to proceed where the land is not genuinely being offered for sale.”

Section 44 inserts a new section 60A into the 2003 Land Reform Act. It provides for certain circumstances where Ministers may require the landowner to pay the expenses of Ministers in connection with the valuation, and the 2013 Consultation (Scottish Government 2014) found that 72% of respondents agreed. Commentary accompanying these responses noted that “the situation where a landowner wishes to take the land off the market is unfortunate, but there may be exceptional circumstances which have led to this decision. It was envisaged that improvements in the valuation processes may lead to this situation becoming rare. A recurring theme was that any landowner withdrawing land at this stage should be required to pay the costs already incurred by communities.”

Sections 45 - 47 relate to rights of appeal to the sheriff; calculating certain time periods in relation to community right to buy; and the provision of information to Ministers.

COMMUNITY RIGHT TO BUY ABANDONED AND NEGLECTED LAND

The existing community right to buy under Part 2 of the 2003 Land Reform Act allows a rural community to register an interest in land at any time; however, a CB can only buy the land if the owner willingly decides to sell. As outlined above, section 27 removes the restriction on rural land and communities. The Policy Memorandum states:

“Land that is neglected or abandoned can be a barrier to the sustainable development of land. In some cases it may prevent the community from developing or improving facilities. There are also cases where derelict or neglected sites become a blight on the surrounding area, and the community could bring the land back into productive use. The Scottish Government considers that in such circumstances, where all other options fail to achieve improvement, communities should be able to acquire the land without having to wait for it to be put on the market.”

The 2013 Consultation (Scottish Government 2014b) found that 83% supported this proposal. However, some (mainly local government respondents) disagreed, believing that the issues involved are extremely complex, and it would be more effective for power to be vested in local authorities, who could work on a case-by-case basis and possibly purchase land on behalf of communities. The Consultation states:

“The prevailing view was that communities should have a compulsory power to buy neglected or abandoned land where the public benefit is clearly justifiable and where reasonable efforts had been made to contact the landlord. It was commented that this may happen in circumstances where the landlord is absent, or has gained planning permission but then failed to take the plans forward.”

Section 48 of the Bill therefore inserts a new Part 3A into the 2003 Land Reform Act to give CBs a right to acquire land in certain circumstances, without a willing seller. Where Ministers approve the application, the owner will be required to transfer the land to the CB, which will be required to pay market value for the land. The procedure for Part 3A is based on the procedure
in Part 3 of the 2003 Land Reform Act which gives crofting communities an absolute right to buy, and is not dependent on there being a willing seller. The Scottish Government (2011) states:

“Two crofting communities have submitted applications under the Crofting Community Right to Buy to purchase land in which they have an interest.

The Galson Trust on the Isle of Lewis submitted a right to buy application in 2005 but withdrew their application after negotiating an amicable agreement with their landowner.

The Pairc Trust on the Isle of Lewis submitted an application in May 2005 and revised applications in February 2010. After lengthy consideration Scottish Ministers decided, on 21 March 2011, to approve the 2010 applications submitted by The Pairc Trust, whilst rejecting their 2005 application.”

The following section summarises the provisions in the proposed Part 3A, as inserted by section 48.

The new section 97B defines “land” as including “bridges and other structures built on or over land, inland waters, canals, and the foreshore” (i.e. land between the high and low water marks of ordinary spring tides).

The new section 97C defines eligible land as that which is, in the opinion of Ministers, “wholly or mainly abandoned or neglected”. Factors which Ministers must have regard to when deciding whether land is eligible will be set out in regulations. Land which is not eligible includes:

- Land on which there is an individual’s home, though this can be subject to exceptions.
- Eligible croft land or croft land which is occupied or worked by its owner or members of their family.
- Certain land that is owned by the Crown.
- Land of such other descriptions that Ministers may set out in regulations.

The 2013 Consultation (Scottish Government 2014b) discusses the definition of “neglected” and “abandoned” at some length, and notes:

- In urban areas, identifying neglect may be more obvious than in rural areas, where land lying apparently unused may in reality be undergoing active stewardship.
- Land which is subject to lengthy legal disputes, inheritance issues, land-banked sites, and development planning where sites are designated for housing which has not yet commenced, present further challenges.
- In attempting to define “neglect”, the recurring view was that this is evidenced by the failure to maintain land over time, thereby reducing its value, and in some cases rendering it increasingly dangerous to the public.
- One of the main criteria for assessing abandonment should be that the owner is not traceable or has not responded to attempts to make contact.

The Policy Memorandum suggests that matters which could be considered in relation to whether land is abandoned or neglected include:
“The physical condition of the land or building; its current use (or non-use); any detrimental economic or environmental impact on the local area; and any failure by the landowner to comply with regulatory requirements. Ministers would also need to consider any environmental, planning or historic designations affecting the land or buildings, for example if there are any restrictions on its use or development relating to conservation purposes.”

The new **section 97D** outlines the requirements which must be met by a Part 3A CB to be eligible to purchase land. It also sets out that the articles of association must define the community by reference to a postcode unit (or units) and/or a type of area which Ministers set out in regulation. The community includes people who are resident in that postcode unit or in one of the postcode units or other areas set out by Ministers. In addition to being resident, members of the community must also be entitled to vote at local government elections in a polling district that encompasses that postcode unit or postcode units or the alternative areas set out by Ministers in regulations.

The new **sections 97E and F** set out certain constraints that apply to a Part 3A CB after it has acquired land; and provide for the creation of a Register of Community Interests in Abandoned or Neglected Land (Part 3A Register), which is to be kept by the Keeper of the Registers of Scotland.

The new **section 97G** relates to the process of applying to exercise the right to buy land under Part 3A, and provides that this can:

- Only be exercised by a Part 3A CB.
- Only be exercised with Ministers’ consent following a written application by the CB.
- Be exercised on multiple holdings, providing that separate applications have been made for each holding.

Further to the above, a Part 3A CB must also list in the application why they believe that their proposed purchase is in the public interest, how it is compatible with furthering the achievement of sustainable development of land, and the reasons why it considers the land to be wholly or mainly abandoned or neglected. This application must also be sent to the land owner.

On receiving the application, Ministers must invite the landowner, certain creditors and any other person that may have an interest in the application to provide written comments within 60 days. Ministers must also take reasonable steps to invite comments from owners of adjacent land. The community body must be sent copies of these invitations.

The new **section 97H** sets out various criteria for consent which Ministers must be satisfied with.

The new **section 97J** sets out the requirements for a ballot to establish that a right to buy application by a Part 3A CB has the support of its community.

Namely, that a proposal to exercise a community right to buy will be deemed to have been approved by the relevant community, if:

- The ballot takes place within the six-month period immediately preceding the date of the right to buy application.
• At least half of the community voted in the ballot or where fewer than half of the members of the community voted, the proportion that voted is sufficient to justify the community body proceeding to purchase the land.

• The majority of the votes cast were in favour of making the application.

Further requirements are also set out, including that a Part 3A CB is responsible for the expense of conducting the ballot, and that it must be conducted as set out by Ministers in regulations. These regulations should include calculating and publishing the number of eligible voters, turnout, and the number of votes cast for and against the proposition. Thereafter, the Part 3A CB has 21 days to notify Ministers of the result (in some circumstances this can be included with the application).

The new sections 97K - R relate to detailed procedural matters e.g. where there is more than one Part 3A CB interested in buying the same land; Ministers giving written notice of their decision to consent or refuse an application; CBs confirming their intentions with Ministers, and other conveyancing practicalities.

The new section 97S sets out the procedure for valuation of the land that a Part 3A CB wants to buy. In summary, Ministers must appoint and pay for a qualified, independent, knowledgeable and experienced valuer within seven days, who will assess the market value of the land at that point, as well as take into account the views of the Part 3A CB and owner. This must be done within eight weeks of being appointed (unless Ministers specify otherwise).

Market value is defined as the sum of the open market value if the sale were between a willing seller and willing buyer, compensation for any depreciation in the value of other land, and interests belonging to the seller as a result of the forced sale, and compensation for any disturbance to the seller resulting from the forced sale. In deciding the value of the land, the valuer may take account of the known existence of other potential purchasers with a special interest in the property.

The new sections 97T and U are consequential to the main policy in section 97S, and relate to further regulations setting out amounts of compensation payable, who is liable, and how this may be claimed. Also, that that Ministers may, in certain restricted circumstances, pay a grant to a Part 3A CB to assist it in meeting the compensation it is required to pay. Ministers are however not bound to pay a grant even when all the circumstances specified arise.

The new sections 97V, 97W, and 97X set out the rights of appeal to the sheriff and Lands Tribunal, and the right of reference to the Lands Tribunal in relation to decisions made by Ministers; valuations; and questions relating to Part 3A applications. Section 97Y does not prevent parties to a Part 3A application from settling or agreeing on a matter which is subject to an appeal under sections 97V or 97W between them. The new section 97Z clarifies some matters of interpretation.

FINANCIAL IMPLICATIONS

The FM states that it does not anticipate that modifications to Part 2 of the 2003 Land Reform Act (sections 27 to 47), or the new Part 3A (section 48) “should impose any significant additional costs on the Scottish Government. […] All additional costs would be met from existing resources.”

In terms of communities and landowners, the FM states that there is a “large degree of uncertainty on the level of costs” that might be incurred, as it will be up to individual bodies how
to use and respond to the provisions. It would appear, that for both aspects of Part 4, that legal costs arising from appeals will be the largest area of potential cost for communities and landowners. However, the FM does not provide a range of costs, as would be expected. There may also be costs for community bodies in preparing bids and developing proposals. At present there are various funding schemes that communities can apply to, but an increase in applications could put pressure on these funds.

PART 5: ASSET TRANSFER REQUESTS

Part 5 sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority”, and how the authority is to deal with such requests. Part 5 is similar in structure and intention to Part 3, on Participation Requests.

BACKGROUND

At present, a number of local authorities have established asset transfer schemes to allow communities to take control of assets within their area. The Government also funds the Community Ownership Support Service, which provides advice and support on the asset transfer process. However, there is not a uniform approach across Scotland, and the process is often unclear. The Policy Memorandum welcomes the existence of current schemes but states that:

“The Bill goes further, giving the initiative to communities to identify property they are interested in, and placing a duty on public authorities to agree to the request unless they can show reasonable grounds for refusal.”

The Policy Memorandum also highlights that the intention is not for the focus of asset transfer requests to necessarily be on buildings and land considered surplus to the public sector’s requirements, but on “what the community seeks to achieve and what property would help them achieve that.”

DEFINITIONS

As with Part 3, Part 5 begins with a series of definitions of the different bodies involved in the asset transfer request process.

A “community transfer body” is either a “community controlled body” (as defined in Part 3, section 14) or another body (or class of bodies) designated as such by an Order made by Scottish Ministers.

Schedule 3 of the Bill lists those bodies to which an asset transfer request can be made, known as “relevant authorities”. There is also an order-making power that enables Scottish Ministers to designate other bodies (or classes of bodies) as such. The list of bodies in schedule 3 is wider than that for schedule 2, and includes bodies like the Scottish Court Service, Crofting Commission, the British Waterways Board alongside local authorities, health boards, police and fire authorities etc.

ASSET TRANSFER REQUESTS – PROCESS

The process for asset transfer requests is set out in the figure below.
Asset Transfer Requests

The process for asset transfer requests is set out in sections 52 to 62 of the Bill. In summary, the process will run as follows:

1. Community transfer bodies can approach a relevant authority for detailed information about the property they are interested in, before making a formal request. What this information can be will be set out in secondary legislation.

2. Once an asset transfer request is made, the relevant authority must assess the proposals, and take a decision based on the economic, social and environmental benefits and any other relevant factors, including the function and purpose of the authority.

3. As with participation requests, the presumption in the Bill is that it must be agreed to, unless there are reasonable grounds for refusal. Although, as with part 3, what these grounds might be is unclear at this point.

4. There is an appeals mechanism to the Scottish Ministers for decisions concerning all authorities other than Scottish Ministers and local authorities. Local authorities are expected to make their own arrangements for appeals. There appears to be no mechanism of appeal against a decision by the Scottish Ministers.

FINANCIAL IMPLICATIONS

Similarly to the section of the FM concerning Part 3 of the Bill, the Government is unable to accurately assess the costs of the provisions on asset transfer requests. Much of the detail of procedure for Part 5 will be set out in regulations, and the FM states that “The costs of these provisions will depend on the arrangements put in place and any additional costs would be met from existing resources.” In terms of relevant authorities, the FM states that:

“During the consultation on the Bill local authorities were not able to provide monetary estimates for any costs or savings that may arise as a result of the Bill. This in part reflects the difficulty in predicting how many requests will be made, the wide variety in the types of request that could be made, for example from the use of a small patch of derelict land to the purchase of a large community centre, and the complexity in predicting savings associated with better service provision.”

There are also potential costs on community transfer bodies, but again the FM does not provide any estimates, although it does set out some examples at paragraphs 81 and 82, stating that:

“The Bill will require a community body making a request to outline the public benefit that would follow from a transfer. Details of what is to be included in a request will be set out in regulations. These are yet to be drafted, but it is expected that they will include the need to demonstrate that any transfer would be financially sustainable in the long term, providing confidence that the proposed benefits can realistically be achieved.

It is not possible to accurately predict the cost for individual community bodies that may arise over the next few years as it will be dependent on the type, value and condition of the asset the community body is seeking to own, lease or manage. In addition there will be other costs such as refurbishment or re-development costs, administrative costs, legal fees and specialist advice that will vary from case to case.”
However, the Scottish Government’s Guidance on Financial Memoranda (Scottish Government 2009) states that: “Costings should not be omitted because final decisions have still to be made. Where this is the case a range of costs should be provided reflecting the possible options.”

**PART 6: COMMON GOOD PROPERTY**

**BACKGROUND**

The concept of “common good” property has its origins in the Middle Ages where local communities used areas of land/property for communal purposes (Ferguson 2006; Ferguson 2013). In time such property and other assets became part of the Scottish burghs where it was administered on behalf of local inhabitants (Ferguson 2013).

The Local Government (Scotland) Act 1973 (1973 Act) brought an end to the burgh system in 1975 by abolishing the town councils which had responsibility for the burghs. Their common good assets were, however, transferred to the new district or islands councils and then, in 1996, to the current unitary local authorities (Local Government etc. (Scotland) Act 1994 (1994 Act)) Common good property is, therefore, limited to those assets held by the burghs at the time of their abolition. No new common good property can now be created.

The Policy Memorandum indicates that common good property includes, “both moveable items (furniture, paintings, regalia etc.) and heritable ones (land and buildings), as well as cash funds which may have been derived from the use or sale of common good property”. Heritable property is the largest component and mainly includes public buildings and public spaces such as parks. According to the Scottish Government, the combined value of local authority common good funds was over £300 million in 2012 (Scottish Government 2014c). This is, however, likely to be an underestimate since a full audit of all common good property held by local authorities has not yet taken place (Scottish Government 2014c).

In very simple terms common good property can be thought of as a special form of property which has a public purpose, where title is held by a local authority for the ‘common good’ of the people of the area in question. However, the governing framework is complex and combines elements of both statutory and case law. Specific rules exist as regards:

- **The administration of common good property** – section 15(4) of the 1994 Act specifically requires local authorities to administer common good property with regard to the interests of the inhabitants of the area to which the common good related.

- **The definition of common good property** – there is no statutory definition; instead the general rule, based on case law, is that burgh property will normally be regarded as common good property unless it has been acquired for a specific statutory purpose (e.g. under housing legislation) or held under a special trust (Ferguson 2013; Scottish Government).

- **Alienable and inalienable common good property** – there are complex common law rules from the 19th century which are still relevant in establishing whether common good property can be considered to be “alienable” for the purposes of the 1973 Act – i.e. able

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2 Burghs are a historic form of town government
3 Aberdeen, Dundee, Edinburgh and Glasgow councils have to have regard to the interests of all the inhabitants of their areas on the basis that the previous burgh boundaries largely match the current council boundaries
4 Magistrates of Banff v Ruthin Castle Ltd (1944 SLT 373).
5 The “common law” is the traditional law formed by the decisions of judges in individual cases
6 Murray v Magistrates of Forfar (1893) 1 SLT 105
to be disposed of (i.e. sold/leased) or used for a different purpose – (see Ferguson 2013).

- **The disposal or appropriation of common good property** – section 75 of the 1973 Act places certain limits on local authorities disposing of common good property or appropriating it (i.e. changing its use). If no question arises as to whether common good property is alienable under the common law, it can be disposed of or appropriated under the rules in the 1973 Act. If there is a question as to whether common good property is alienable, any disposal may only take place if the Court of Session or sheriff court authorises it (see Ferguson 2013).

- **Accounting** – common good property has to be accounted for separately from a local authority’s general fund (1973 Act) and specific accounting procedures exist (see LASAAC).

In recent times claims have been made that local authorities have failed to manage common good property in the interests of local inhabitants and that the current system is not fit for purpose (Wightman and Perman and Land Reform Review Group 2014). Particular issues raised include:

- lack of clarity as to the definition of common good property and alienable/inalienable common good property under the common law
- lack of clarity as to what common good property is held by local authorities due to poor record keeping and a failure to carry out audits
- lack of transparency and direct engagement with local communities about the use to which common good property is put
- failures to correctly account for common good property and, in particular, income generated by the sale of common good property
- the sale of common good property to third parties and the use of common good property for different purposes from which it was originally intended to be used.

Various legal disputes have arisen concerning common good property, notably in 2013 in the Portobello Park case which related to whether Edinburgh Council could legally build a high school on Portobello Park, which it accepted was inalienable common good land. This plan was challenged in the Court of Session which found that, although the rules in the 1973 Act allowed the courts to authorise the disposal of inalienable common good land, they did not permit local authorities to appropriate such land (i.e. to put it to another purpose). As a result, Edinburgh Council felt forced to introduce a Private Bill to the Scottish Parliament in 2013 with the aim of changing the status of the land to alienable common good property, thus allowing for a change in use (see City of Edinburgh Council 2013). The Bill received Royal Assent on 1 August 2014, thus solving the specific legal problem. Arguments have, however, been made that the case highlights the need for a general statutory provision for the appropriation of inalienable common good land (Scottish Government).

**THE BILL**

The Policy Memorandum explains that the aim of Part 6 of the Bill is to increase transparency:

“about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal.”
(paragraph 87)

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In this light, the Bill requires local authorities to –

1. establish and maintain a register of common good property (sections 63 and 64), and
2. consult with community councils and other community bodies before common good property is disposed of or its use changed (sections 65 and 66)

The process envisaged in relation to these two matters is broadly similar and includes:

- **Publication**
  - before establishing the common good register, local authorities must publish a list of common good properties (section 63(2)
  - local authorities must also publish details about proposed disposals of common good property/changes of use before they take a decision (section 65(2)
  - publication may be in such a way as the local authority may determine (sections 63(3) and 65(3))
  - inclusion in the register will not determine whether property is in fact common good and that local authorities will not be expected to legally verify the status of every item (Policy Memorandum)

- **Notification to community bodies** – local authorities must notify the above publications to any community council established for the local authority area (sections 63(4) and 63(5)(a) and 65(4) and 65(5)(a)). In relation to the common good register, they must also notify “any community body of which the authority is aware”, whereas a proposed disposal/change of use should be notified to “any community body that is known by the authority to have an interest in the property” (sections 63(5)(b) and 65(5)(b))

- **Representations** – in establishing the register, or deciding whether or not to dispose of a common good property/to change its use, the local authority must have regard to representations made by the relevant community council/community bodies mentioned above and those made by other persons in respect of the list of properties/proposals in relation to disposals/change of use (sections 63(6) and 65(6))

- **Inspection/transparency** – local authorities must make arrangements to enable the public to inspect the common good register free of charge and must make it available via a website (section 63(8))

- **Guidance** – in carrying out the above duties, local authorities must have regard to guidance issued by the Scottish Ministers (sections 64 and 66)

**ISSUES**

A number of parties to the Scottish Government’s consultation welcomed the potential for the Bill to increase transparency about the existence, use and disposal of common good assets. However, there were also critical comments, particularly from local authorities and community councils. The main areas of criticism appear to be as follows –

- **Lack of ambition** – arguments primarily relate to the failure of the Bill to take a more holistic approach and to clarify/codify the existing law on the common good, including

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8 The Government’s letter of 1 August (response to question 100) indicates that, although some local authorities already have such a register, there is currently no legal requirement to have one
9 Community body is defined in section 67 of the Bill
definitions of common good property and alienable/inalienable common good property (see SOLAR).

Other arguments are that the Bill does not provide a solution to the issue raised in the Portobello Park case that there is currently no straightforward legal process for the appropriation of inalienable common good property (see SOLAR, the Law Society of Scotland; Renfrewshire Council) and that the Bill does not regulate common good accounting practices (see Land Reform Review Group 2014; Selkirk Regeneration Company)

- **Shortcomings in the system of common good registers** – one strand of arguments is that the system does not go far enough as it does not sufficiently define the parameters needed for a register – e.g.: the extent to which local authorities should carry out audits of common good assets; the timeframe for setting up a register; the legal status of properties on the list; specific rights of bodies to challenge the inclusion/exclusion of properties to the register etc. (see West Dunbartonshire Council). Another strand of arguments is that the process is unlikely to work properly unless it is sufficiently resourced (Accounts Commission and Auditor General for Scotland; Hillhead Community Council)

- **Shortcomings in the consultation system** – arguments have been made that the consultation process is too weak to promote community empowerment as it merely requires local authorities to “have regard” to representations made by community bodies/community councils (potentially at a late stage in the process) and does not give them any additional rights in relation to the classification of common good property or disposals or changes of use (Land Reform Review Group 2014; Burntisland Community Council). Other arguments relate to the need for increased clarity as to the type of community bodies with which local authorities must consult (Community Land Advisory Service)

**FINANCIAL IMPLICATIONS**

The FM explains that the new statutory duties placed on local authorities will lead to costs. According to the Policy Memorandum, although “local authorities expressed some concern about the potential resources involved in establishing registers” in the consultation, they did not state specifically how much this might cost. The FM does not go any further in attempting to provide an indicative cost.

**PART 7: ALLOTMENTS**

**BACKGROUND**

The Scottish Government published its first National Food and Drink Policy, *Recipe for Success* (Scottish Government 2009b) in 2009 which included a commitment to strategically support allotments and community growing spaces. Following on from this publication, the Grow Your Own Working Group was established in 2009 and their report (Grow Your Own Working Group 2011) contained a recommendation to amend the existing legislation governing allotments. The Group specifically highlighted the need to review the duties placed on local authorities in this area.

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10 For the reasons why the Scottish Government did not follow this approach see Policy Memorandum, para. 91
11 The Scottish Government appears to suggest that such issues may be dealt with in ministerial guidance. See the Government’s letter of 1 August (response to question 104). See also the response to question 107 for views on appeals
In addition to two consultations on the Bill, the Scottish Government also held a separate consultation (Scottish Government 2013b) on the proposed allotments legislation in April-May 2013, which has informed the detail of the provisions in the Bill.

CURRENT FRAMEWORK

Existing allotments legislation is a complex area, particularly in relation to land owned by local authorities. The principal legislation governing allotments is the Allotments (Scotland) Act 1892 as amended by the Land Settlement (Scotland) Act 1919 and the Allotment (Scotland) Acts of 1922 and 1950. These acts currently detail the duty of local authorities to provide land in their local area for allotments, as well as the conditions under which this duty is placed. The legislation also allows local authorities powers to provide sufficient numbers of allotments in their area by purchasing or leasing suitable land.

Further, the 2003 Local Government Act (Part 3) creates a discretionary power which enables Local Authorities to do anything they consider is likely to promote well-being of their area and/or people.

Part 7 of the Bill proposes to repeal the existing legislation (that specifically relates to allotments) and make a new “updated, simplified and clarified” provision for allotments. The Policy Memorandum notes that this was considered to be a more straightforward approach than to seek to amend the previous legislation. The new legislation includes the restatement of existing legislation where appropriate.

PROPOSALS IN PART 7 OF THE BILL

Definitions

Sections 68 and 69 provide a definition of ‘allotment’ as well as ‘allotment site’ for the purposes of the Bill. Allotment sites had not been defined in previous legislation, and the new definition for allotments aims to reflect their current usage. Both definitions relate only to land owned or leased by the local authority as private allotments are not covered by the Bill.

While the consultations gathered responses relating to the possibility of defining a recommended size for allotment plots, this is not included in the Bill. Instead the Bill allows for the size of allotments to be set out by Scottish Ministers in regulations under section 68(d).

Provision of allotments and maintenance of waiting lists

The duties of local authorities in relation to the provision of allotments and the management of requests are detailed in sections 70-72. The Bill places an obligation on local authorities to establish and maintain a waiting list of residents who have requested to lease an allotment.

Local authorities also have a duty under the Bill to take “reasonable steps” to provide a sufficient number of allotments to ensure that waiting lists are kept below a specified target. However, the Bill does not set out any further detail on the format of the “reasonable steps.” Where a local authority already owns or leases allotments this duty is triggered when there is one person on the waiting list. Local authorities must ensure that the number of people on waiting lists is no more than half of the total number of allotments owned or leased by the local authority. For local authorities who do not own or lease any allotments at the point of commencement, this section comes into force once there are 15 individuals on the waiting list.

The 2014 consultation included 3 potential options for keeping waiting lists below a set target. The option included in the Bill (which ensures that the duty comes into play when there is a
demonstrable, clear and consistent demand) was the least favoured by respondents (13% preferred this option). The most favoured option (45% of respondents) allowed for the waiting list target used in the Bill to also include a time limit of no more than 3 years in length. The supporting documents do not state the reasons why the Scottish Government chose the target that was included in the Bill.

Allotment regulations, disposal, strategy and reporting

Sections 73-79 look at the duties of local authorities in respect of running, maintaining and reporting on their allotment sites. This includes details regarding:

- An obligation to ensure that regulations for allotment sites in their area are in place. The Bill lists the areas that the regulations must make provision for, including rent, maintenance and other matters that the regulations may make provision for, including allowable structures. It also allows for regulations to differ between allotment sites to take into account local circumstances.
- The processes for creating and amending these regulations.
- Procedures for the disposal of allotments and allotment sites which cannot take place without the consent of Scottish Ministers.
- Proposals to ensure that every local authority prepares a food-growing strategy, identifying land that can be used for producing food and making clear how future provision of allotments and allotment sites will be met. This strategy would need to be reviewed every 5 years.
- A requirement to produce and electronically publish an annual allotments report, including waiting list numbers, and the steps taken by the local authority to comply with the duty to provide sufficient numbers of allotments and allotment sites.

Management of allotments and the rights of tenants

The remainder of Part 7 relates primarily to local authority powers to manage allotments and to the rights of allotment tenants in respect of these powers. These sections focus on the potential capacity to:

- Remove buildings and structures on allotment sites that break the regulations set out by the local authority for the allotment site. It also details the procedures that should be followed in notifying tenants of the removal of these structures and the opportunity for such a tenant to make representations in relation to the proposed action. Section 80 also allows a local authority to recover the costs of removal if a tenant is found to be liable.
- Allow an individual or association to represent the interests of tenants on an allotment site and for the local authority to delegate specific functions to them.
- Incur expenditure in relation to the management of allotments.
- Terminate leases and sub-leases of allotments or allotment sites in a number of potential situations, citing minimum notice periods, opportunities for tenants to appeal, and the situations where Scottish Ministers are required to give consent or where they have the power to amend these procedures.
- Allow tenants to sell surplus produce or to remove structures, plants or produce belonging to them from their allotment.
- Establish the situations where either the local authority or the tenant may claim compensation, and the procedures through which such claims should flow. These include compensation for deterioration, loss of crops or disturbance when a lease is terminated.
FINANCIAL IMPLICATIONS

While the financial memorandum anticipates no additional costs on the Scottish Administration, a number of costs relating to local authorities are detailed. These costs are dependent upon the current state of allotment provision in each local authority, and as a result cannot be accurately measured, and only indicative costs have been included. For local authorities who require to provide additional allotments to meet a high demand there is an estimate of £1,900 to £6,250 for the creation of each new allotment and an estimate of up to £150,000 for each new allotment site. The production of an allotments strategy is estimated at under £10,000 for each local authority, while an annual report is expected to cost between £500 and £1,000 to produce. The consultation recorded costs for maintaining a waiting list at anything from £100 to £9,000 per year.

PART 8: NON-DOMESTIC RATES

Non-Domestic Rates (also known as “business rates”) are a property based tax charged on properties used as businesses (e.g. shops, offices, warehouses and factories) and the public sector. They are based on the rateable value of a non-domestic property, multiplied by a poundage set annually by the Scottish Ministers, less any relief to which a ratepayer may be eligible. Business rates rise annually, usually in line with inflation. The Scottish Government has a series of relief schemes that are aimed at helping businesses by reducing their rates bill. In 2011, 57% of business properties paid zero or reduced rates. The system of Non-Domestic Rates and the various reliefs currently available are discussed in detail in the SPICe briefing, Non-domestic Rates (Berthier 2013).

Currently reliefs are set centrally by the Scottish Government, with local authorities having very limited scope to vary the terms locally. Part 8 of the Bill introduces a new power to allow local authorities to create localised relief schemes. The Policy Memorandum states that “there will be no restrictions on this power; local authorities will be able to grant the relief to any type of ratepayer or for any reason, as they see fit.” But, it goes on to state that any reliefs “will need to be fully funded by that authority, so it will need to balance the interests of taxpayers across its area.” The local authority will have no power to increase rates locally for business or levy any new supplement. In the letter of 1 August, the Government stated that “Relief could be granted to a sole property, a street, a town centre or a particular type of business or sector. They could be used, for example, to support or create employment, or to encourage regeneration of a particular area.”

This issue was consulted upon as part of a wider consultation on reform of business rates, Supporting Business, Promoting Growth (Scottish Government 2013) and received a high level of support (75% of those who expressed a view).

This part is not anticipated to have any financial implications, as local authorities are required to fully fund any reliefs that they introduce.
SOURCES


Ferguson, Andrew C (2013). *City of Edinburgh Council (Portobello Park) Bill* Written submission from Andrew C Ferguson. Available at: [http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/Inquiries/EPPwe16_Andrew_C_Ferguson_WEB.pdf](http://www.scottish.parliament.uk/S4_City_of_Edinburgh_Council_Portobello_Park_Bill_Committee/Inquiries/EPPwe16_Andrew_C_Ferguson_WEB.pdf) [Accessed 9 September 2014]


RELATED BRIEFINGS

SB 11-52 The Commission on the Future Delivery of Public Services (456KB pdf)
Local Government and Regeneration Committee  
Meeting 24 September 2014  

Written Submissions on the Community Empowerment Bill

Purpose

1. This paper provides members with the written submissions received as part of the Committees call for evidence on the Community Empowerment (Scotland) Bill. The submissions sent by the witnesses who are attending the meeting on Wednesday 24 September 2014 are included in this paper.

Submissions

2. The paper includes the following submissions:

- Coalfields Regeneration Trust  Pg. 2
- Scottish Community Alliance  Pg. 5
- Development Trusts Association  Pg. 12
  Scotland
- Scottish Council for Voluntary Organisations (SCVO)  Pg. 20
- Voluntary Action Scotland  Pg. 31
- Professor Annette Hastings  Pg. 38
- COSLA  Pg. 42
- BIG Lottery Fund  Pg. 53

Paul Nicholson  
Committee Assistant  
18 September 2014
Submission: Coalfields Regeneration Trust

COMMUNITY EMPOWERMENT (SCOTLAND) BILL

Background to The Coalfields Regeneration Trust

The Coalfields Regeneration Trust (CRT) is dedicated to improving the quality of life for people in Britain’s former coalfield communities.

Established in 1999, our mission is to lead the way in coalfields regeneration and restore healthy, prosperous and sustainable communities.

We work with people at a grassroots level in order to build confidence and encourage them to take their communities forward. Since 1999 CRT we have supported just over 1000 projects promoting and supporting regeneration activities in the coalfields across Scotland. We have supported a wide range of initiatives that provide added value to the community planning process whilst making significant progress towards our Objectives.

We deliver programmes and services that;
- support people into work
- improve skills and help people gain qualifications
- create pathways into volunteering
- improve health
- develop sustainable solutions for community facilities
- engage young people in positive activities
- grow new businesses and social enterprises
- provide community development support

We work in the heart and soul of coalfield communities, investing resources, expertise and knowledge to ensure local people are able to fulfill their potential. Coalfield communities had a strong history of unity and we have galvanized local people enabling them to participate in building a new positive sense of community.

In response to the invitation to give evidence to the Scottish Parliaments Local Government and Regeneration Committee’s call for written evidence on the above Bill. Specifically the call for evidence focuses on the following questions.

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

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

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?

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?
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?

**CRT RESPONSES**

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

CRT has nearly 15 years experience of supporting community action in the coalfield areas across Scotland. A key area of our work involves focusing more explicitly on building capacity in our most fragile coalfield communities, and where we and others have found it difficult to invest in the past.

CRT welcomes the Bill and agrees that it will help to empower communities across Scotland, because

- It sets out a plan for empowering people of Scotland to get involved and make important decisions about their communities
- It is about helping residents play an active role in regenerating their communities, the people living in the communities know what’s best for their area
- It also encourages public service providers play a more active role in listening to communities and encouraging them to take part in partnership working arrangements

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

The Bill suggests that public service providers should talk more to communities, help them have their say about services, and be listened to.

Many residents think ‘it’s the councils responsibility’ to develop communities and provide services, more needs to be done to promote to residents that its okay for them to take ideas forward and let them know who can help them do this.

Local Authority Officers don’t always live in the areas where they work, yet it’s often the same officers who make decisions about a particular community, for example Community Planning Agencies. We anticipate that the Bill will ensure greater interaction with communities should work towards ensuring a local issues and concerns are taken into account when decisions are being made.

The Bill works towards making sure the right people will be heard and have a greater input, its local people from the communities who know what the issues and concerns are for their communities, ‘coming from the horses mouth’ so to speak would result in more sustainable communities – getting it right

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?
It is clear that the affluent communities are more successful in being heard. CRT has found that our most disadvantaged communities struggle to deliver regeneration activities as people don’t know how to go about regenerating their communities and they have low confidence levels, skills and knowledge to take forward their ideas. This could be improved by financial investment and services to encourage and support residents to become involved in their communities at a local level.

A combination of partnership working, development support with funding is a potent mix for village and neighbourhood level organisations, which will help, bring about neighbourhood renewal and social inclusion.

‘They don’t know what they don’t know’

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?

More needs to be done to help communities:
- Know who is there to help them become involved
- Easily find out what assets, land etc is available to them
- How they can go about acquiring assets and develop their communities

We hope you will find the comments useful

Pauline Douglas
Head of Operations, Coalfields Regeneration Trust, Scotland
September 2014
Submitted in response to the call for evidence from Scottish Parliament’s Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill. Closing date - 5/9/14

Scottish Community Alliance (SCA) is a coalition of national networks that provide specialist technical advice and opportunities for peer to peer support across a broad range of community based activity that takes place throughout Scotland. Many of these intermediary networks have developed a body of knowledge and expertise which relate to specific measures proposed in the Community Empowerment (Scotland) Bill. For instance, Community Land Scotland, Community Woodlands Association and Development Trusts Association Scotland have significant expertise in relation to the provisions which seek to extend the Community Right to Buy and simplify and improve the provisions contained in the Land Reform (Scotland) Act 2003. Some, like Scottish Allotments and Gardens Society, Nourish and Federation of City farms and Community Gardens have a special interest in those proposals that relate to allotments and the expansion of community growing and will be providing expert evidence in that regard. Others have a more general interest in the broader principles of community empowerment and may offer some comment or detailed evidence on that basis. The evidence submitted here by SCA will not replicate the detailed evidence and analysis of its member networks. Instead SCA seeks to offer some general comments on the measures proposed by the Bill.

During the early consultations on the Bill, SCA took the view that legislation of this nature should be underpinned by some ‘first principles’ of community empowerment. These are:

- **Subsidiarity** is an organising principle that should inform all aspects public policy in Scotland and be at the heart of the new legislation on community empowerment. The principle of subsidiarity requires any matter to be handled by the smallest, lowest, or least centralised authority capable of addressing that matter effectively.

- **Self-determination.** Local people should be allowed to determine for themselves how their community is defined and which local organisational structure is best suited to take forward their programme of local empowerment.

- **Local people leading.** Community empowerment only occurs when local people lead the process of taking power and resources to themselves. Communities empower themselves through bottom-up activity and the evidence points to the fact that better outcomes are invariably achieved when this occurs.

- **Land and self-generated income.** Ownership of land and control over land use, and the capacity to generate income streams which are independent of...
the state, are critical in determining the degree to which a community is able to empower itself.

1. To what extent do you consider the Bill will empower communities?

This Bill needs to be seen as one element in a series of related policy developments, particularly over the past five years. When Scottish Government and COSLA launched the Community Empowerment Action Plan in 2009, Alex Neil MSP, the Minister of Housing and Communities described community empowerment as a journey with no fixed destination with the Action Plan being just one of many staging posts along that journey. The Action Plan had special significance because it represented the first time that the Scottish Government had published a formal policy position in relation to community empowerment. And since 2009, the policy context has become steadily more encouraging and supportive of community empowerment. The most recent national regeneration strategy published in 2011 – Achieving a Sustainable Future – being another example of this change. This new strategy, with its focus on community led regeneration, reflected a clear departure from previous approaches (which had been predominantly top down and led by investment in physical infrastructure) by acknowledging that these regeneration efforts had largely failed to achieve the desired outcomes, and in any event were now ‘fractured’ as a result of the financial crisis in 2008. The crisis in our system of public services identified by the Christie Commission (2011) and the new emerging consensus around the value of co-produced services, added further weight to the view that communities would have a central part to play in the design and delivery of public services in the future. The developing land reform agenda, and the emergence over the past ten years or so of a vibrant community sector based on the ownership of land and other asset classes, have further contributed to a general policy environment into which a Bill of this nature can only be viewed as adding further momentum.

However, we are aware that that the principal driver behind this Bill is the Scottish Government’s commitment to the public service reform agenda rather than any belief in the intrinsic value of community empowerment as a ‘social good’ in its own right. That said, this Bill contains new opportunities that communities can take advantage of and, if they do, these communities are likely to become more empowered than they otherwise would be. It has often been said during the course of the consultations for this Bill, that legislation cannot empower communities - only local people can empower themselves. Therefore, it is important to be clear that the Bill on its own is only going to present opportunities that local people may or may not be able to take advantage of. The extent to which local people choose to, or are able to, take advantage of these opportunities will inevitably vary across the country and be determined by a range of other factors – some internal, some external. These factors may be categorised as capacity (skills, experience, confidence and access to external networks), resources (funding and human), and the immediate context (supportive public agencies, local development opportunities). Each of these factors will need to be addressed if the full potential of this Bill is to be maximised.
One further point is worth making in the context this section. The debate around community empowerment is heavily shaped by the extent to which communities have been able to engage with the current system of local government. Concerns about the health of Scotland’s system of local representative democracy are well documented and most recently these have been laid bare in the final report of The Commission for Strengthening Local Democracy. It could be argued that the current level of interest in how communities can be empowered correlates directly with the level of concern about this democratic deficit. In other words, if this deficit in the quality of local democracy was to be resolved, the community empowerment debate might well be very different. It could also be argued that the proposals within the Bill to enhance levels of community empowerment are in effect only compensatory measures for a deeper problem within local democracy.

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

While it is true that only communities that can empower themselves, it is equally true that public sector organisations are not passive around this process – they can either play an enabling role or they can play an obstructive one but they cannot be neutral. If those in the public sector choose to see the community empowerment process as an opportunity that can assist them in the design and delivery of public services at a time of ever decreasing resources, then there are very significant benefits to be gained. If on the other hand, they see it as a threat or an unnecessary distraction at a time of ever more scarce resources, then trouble lies ahead. At the heart of this policy shift towards community and co-produced solutions lies a requirement for an openness to new thinking and ways of working. Changing attitudes and culture on this scale is very difficult to bring about in large organisations and remains one of the biggest obstacles to be overcome. If public sector organisations are able to view an empowered community sector as a partner, with parity of esteem, within the community planning process then significant long term benefits may well accrue.

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?

All communities are different, have widely varying capabilities and levels of capacity with which to take advantage of opportunities as they present themselves. There is well researched evidence to show that when resources are scarce, those communities with ‘sharp elbows’ end up with the lion’s share of what is available. Given the absence of a level playing field in this respect and in the interests of supporting those communities where need is greatest, there is going to have to be substantial investment in compensatory measures. But this is not just about resources – although that is important – it is as much, if not more so, about how these resources are allocated. Since the days of New Life for Urban Scotland, 100’s of millions of pounds have been spent and much of it wasted in the name of community regeneration. In particular, much of this wasted investment has been in short term, revenue funded projects with no eye on the long term sustainability of the
regeneration process, with many of these projects conceived of and parachuted into these communities in top down fashion. If this fundamental problem is to be addressed, there requires to be a serious reappraisal of how the key issues of trust and risk are to be managed in the future. In the past, by effectively controlling all decisions of how and where regeneration investment was to be made, the public agencies were working within very low thresholds of risk and trust – ‘risk’ in terms of the risk of money being misspent (although that depends on what is understood to be meant by misspent) and ‘trust’ in terms of trusting local people to know what is needed to improve their community. In respect of both of these critically important elements of the regeneration process, what is required more than anything else is a fundamental shift in terms of attitude and approach towards risk and trust.

With respect to which measures are needed to assist communities, SCA believes much greater emphasis needs to be given to investing in the community sector’s capacity to support itself. In particular much more could be done to support peer to peer learning and support. This already goes on in an informal, ‘under the radar’ fashion with a number of community anchor organisations around the country being called upon to offer ‘fire-fighting’ support in other communities where the need for such help has been identified. Most of this is informal and comes about as a result of the constant networking that runs throughout the community sector. This work however could be built upon and expanded with appropriate levels of investment. In some cases, a very little investment can make an enormous difference. A small grant to allow a community to visit with another group that has already achieved something of interest, can have a massive impact. Previously, a Knowledge and Skills Exchange Fund which enabled this kind of activity across the sector had proved to be very popular and successful. It was simple idea – to remove the financial barrier to communities learning from each other. However it fell victim to the budget cuts. This year the Scottish Government has demonstrated that it has been listening to the sector and has invested significant resources into a Strengthening Communities Fund which invests directly into a number anchor organisation with aim of helping them to accelerate their business plans and become more sustainable. This is to be welcomed but it is important it does not become another piloted approach that is soon forgotten. Instead we would argue that this is the kind of investment that will be critical to the successful implementation of this Bill and should be expanded upon at the earliest opportunity.

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?

i) National outcomes.

Enshrining the national outcomes in legislation is a statement of the Government’s commitment to this way of setting out its strategic priorities and in showing a degree of accountability and transparency in reporting progress towards these priorities. It is therefore to be supported although the extent to which it is relevant to community empowerment is less clear.

ii) Community Planning
As with the section on National Outcomes, the relevance of community planning as it has been widely understood and practised since its inception in 2003, to community empowerment is not clear. Other than the duty to engage with communities which, as the Policy Memorandum, acknowledges is a distinct activity from community empowerment, it is not clear how putting CPPs on a statutory footing will improve the situation but there again, neither should it make it any worse.

iii) Participation requests

This is a positive measure that presents communities with a new opportunity to enter dialogue with a public service provider over an aspect of a public service and ultimately to affect real change and improved outcomes within a service area. However its value will depend largely on the internal culture of the public body and how that body receives and responds to this request. The absence of any appeal process leaves the balance of power with the public body which may ultimately discourage communities from exercising this right. It is however to be welcomed that there appears to be a presumption in favour of the community’s right to participate with a requirement on the part of the public body to explain it refusal.

There is some concern as to the applicability of this provision to the arms-length organisations that many Councils have set up to run services and administer assets. Clarification is sought on this.

iv) Community right to buy

There is much in this section that is to be welcomed. In particular the extension of the community to right to buy to all communities in Scotland and the changes to the procedures of the Land Reform Act to make it simpler and more widely accessible. There are some technical aspects of these proposed procedures that colleagues from the community land movement have identified which make sense and would improve the operation of this part of the Bill.

There are three areas of this section we would like to make specific comment on:

a) Late applications to register interest in land. In an ideal world, a community body would survey all local land and assets, agree amongst themselves which assets are of strategic long term importance to the community and then set about making a multiple set of applications, thereby registering interest in all these key assets. But the real world is not the ideal world. Communities are reactive not proactive by nature, and are galvanised into action usually only when something is threatened. But even if they had the inclination to think forward to the day that any of these strategic assets were to be put on the market, it is unlikely they would wish to assert their rights due to the potential for ill feeling that this might arouse from the potential seller who will perceive this as a constraint on their freedom to access the best market price possible. The additional hurdles associated with a late registration also appear to be too burdensome. We would therefore
support the position of Community Land Scotland in respect of this aspect of the Bill.

b) Reregistration of interest. Given the procedural burden placed on communities to re-register their interest after five years has lapsed, and given the assumption that late applications are viewed generally as the exception rather than the rule (and therefore the assumption that multiple applications should be being made by community bodies) we would support the proposition that the re-registration should be required after ten years rather than five.

c) Absolute right to buy – abandoned and neglected land. We support the introduction of this provision in principle but would also support a number of concerns that members have raised in their more detailed submissions. Particularly around some inconsistencies with the procedures as laid down for this section as compared to the improved procedures for the pre-emptive Community Right to Buy. In particularly, we would agree with the comments from the Federation of City Farms and Community Gardens with regard to the suggestion that this section in the new Bill has followed the same wording as the Land Reform Act 2003 rather than the new improved wording for the pre-emptive right to buy. We would also support the view that more clarity is needed to determine what is meant by abandoned and neglected land as the same description of land in two very different settings (city centre vs remote rural) can be interpreted very differently. Given that these provisions could result in an asset owner being deprived of his/her property against their wishes, it is very important that there is absolute clarity around the circumstances in which this will be permissible. A number of SCA members have raised specific and technical questions regarding this section. While these issues need to be addressed, it is also clear that all these responses are in support of the broad principle of having an absolute right to buy as a backstop provision.

v) Asset transfer requests

These provisions are to be welcomed and in particular the principle that it is not only the transfer of ownership of an asset that communities might be interested in but also the management or use of an asset. In each of these respects the Bill will strengthen the hand of communities. The presumption in favour of the community’s interest in a public asset and the placing of an onus on the public body to respond and give reasons if the transfer is not possible is also a step forward. It would be an even bigger step forward if there was a duty on public authorities to maintain and publish an asset register which communities could inspect and consider which, if any, public assets they were interested in.

vi) The Common Good
This section lacks real substance and it is unlikely to resolve the long running issues that have surrounded the common good. In particular it does not resolve the issue of what is meant by the common good. Requiring local authorities to publish a register will be of little value if there is no statutory definition of what should be included in it. There are other substantive questions such as whether the administration of common good funds should be invested with communities rather than local authorities and who should hold the title to common good assets that have not been resolved and should perhaps be the subject of wider debate.

vii) Allotments

This section has been broadly welcomed by SCA members with specialist knowledge of growing and the local food agenda. In particular the requirement on local authorities to produce a local food growing strategy will provide an important focus for this important aspect of building local resilience. In general it is to be welcomed that the previous and outdated allotment legislation which was no longer fit for purpose is to be replaced by this new legislation. However there are aspects of the old legislation that appear to have been lost. In particular the duty on local authorities to provide suitable land to meet demand from their existing stock or by leasing or purchasing new land does not appear in the new legislation and this will undermine the aim of providing better support for demand for allotments and community growing spaces. SAGS have raised a specific concern about the lack of precision in the Bill when referencing the size of an allotment and have proposed that the Bill should refer to a normal plot as being 250 square meters (which can then be subdivided into halves or quarters to suit local circumstances).

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?

SCA has no comment to make.
Scottish Parliament Local Government and Regeneration Committee

Response to Call for Evidence: Community Empowerment Bill

The Development Trusts Association Scotland (DTAS) is the national member-led organisation for development trusts in Scotland, with a membership of 210. Our members are community-led organisations engaged in the regeneration of their communities through a combination of enterprise, community ownership, creativity and voluntary effort. The most recent survey of members, established that in 2011, DTAS members had a combined annual turnover of £39 million (of which £21 million was derived from non-grant income) and owned assets valued at £51 million. See: www.dtascot.org.uk

Over the last 5 years, DTA Scotland, has run a Promoting Asset Transfer programme (2009-11) and we currently operate our Community Ownership Support Service (2011 to present). Both these Scottish Government funded activities have focused on the sustainable transfer of local authority assets to appropriate community organisations, although COSS has more recently began to engage with other public agencies seeking to explore asset transfer. See: www.dtascommunityownership.org.uk

Early this year, a DTA Scotland-led consortium was awarded a contract from the BIG Lottery Scotland and Carnegie UK to run a 3 year community shares programme. Community Shares Scotland aims to create a step change in the awareness of, and knowledge about, this exciting new form of social finance, and will directly supporting tens of community share issues across a range of community sectors. This is likely to include community renewable energy projects, community owned shops and other businesses, and the acquisition and development of community owned asset. See: www.communitysharesscotland.org.uk

DTA Scotland welcomes the opportunity to submit written evidence on the Community Empowerment Bill and this submission to the Local Government and Regeneration Committee draws heavily on the combined knowledge and experience of DTA Scotland as an intermediary organisation, and the collective wealth of knowledge and experience of our membership.
To what extent do you consider the Bill will empower communities?

Over the last couple of decades there has been an almost organic growth in development trusts, community land initiatives and other types of community anchor organisations throughout Scotland. The emergence of these organisations builds on, and complements, the proliferation of community controlled housing associations and tenant co-operatives during the previous couple of decades. These community anchor organisations are running an increasing range of services, activities and businesses, and the approach taken is invariably characterised by the use of community ownership and community enterprise. The progress which these organisations make over the coming years, will determine the success of the Scottish Government’s aim of promoting community-led regeneration.

DTA Scotland believes that key parts of the Community Empowerment Bill (CEB) reflect and build on this grass roots development, and have the potential to strengthen the ability of communities to take the initiative, be innovative and enterprising, and unlock local creativity. In particular we believe that the CEB has the potential to encourage and support many more communities to become involved in community-led regeneration and crucially, to make it easier for communities to acquire vital or important physical assets, and/or have a greater role in the delivery of local services. DTA Scotland acknowledges that this will depend to a large extent on getting the detail within the accompanying statutory guidance right, but believes that parts of the Bill provide a useful overview and framework for this to take place.

DTA Scotland particularly supports Parts 3, 4 and 5 of the Bill, covering the areas of community involvement in service delivery, community right to buy and asset transfer respectively. It is however less clear how some other parts of the CEB contribute to community empowerment, and caution needs to be taken to ensure that the range of provisions included, do not confuse rather than clarify what we mean by community empowerment. For example, top down, community engagement, which is a valuable activity in its own right, is not community empowerment. Too often in the past, opportunities to empower communities have been lost on the altar of community engagement.

In general however, DTA Scotland is very supportive of the Community Empowerment Bill. We recognise that some key messages have been picked up within previous consultation phases which we believe have undoubtedly strengthened the Bill. We also believe that there is potential to further refine and strengthen the CEB, and we offer some suggestions which we hope will assist the Local Government and Regeneration Committee’s discussions and deliberations.

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

DTA Scotland believes that the existence of strong, independent community anchor organisations provides the public sector organisations with an additional, alternative
and potentially dynamic partner as they grapple with the undoubted challenges which the public sector will continue to face in these straightened financial times. The ability of community organisations to utilise local passion and access alternative funding to maintain important and heritage assets, to find new and creative ways to deliver (or co-deliver) key local services, to take a more enterprising approach to address some public sector challenges, and to take increased responsibility and build community resilience, should all be regarded as a useful and positive contribution which provides an alternative but complementary option for public sector organisations.

The experience of development trusts suggests that this is precisely what happens when a mature and mutually respectful relationship develops between community anchor organisations and, in particular, their local authority. However, far too often, the emergence of a development trust is seen as a threat, rather than a potential ally and partner, and the relationship is characterised by a lack of understanding and respect, and can often be undermined by bureaucratic inertia.

The Community Empowerment Bill ushers in a new approach which, if it is to have impact and be successful, requires significant culture change within large parts of the public sector. This is unlikely to be easy or quick, but the Community Empowerment Bill has the potential to give out a serious and important message about Scottish Government intent. DTA Scotland welcomes the recent COSLA report which embraces the principles of subsidiarity and empowerment, and regards this report as an extremely important contribution to the debate and to the necessary culture change process.

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill?

The Minister has made it clear at many public appearances over the last 12 months that legislation will not be enough in itself, to deliver community empowerment, and DTA Scotland totally endorses this position. There is clearly two additional issues which need to be addressed – one of ensuring the sufficient availability of funding and resources which support the activities covered within the Bill, and secondly, as the question suggests, ensuring that the right kind of information, advice and support is available to, where necessary, build the capacity of community anchor organisations to take advantage of the provisions.

DTA Scotland, reflecting the experience and views of our members, have argued consistently that we need to re-think how we do ‘capacity building’ in Scotland if we are serious about supporting community-led regeneration. We need to be clear about whose capacity is being built, and for what purpose. On the basis of this we may need to re-prioritise, reconfigure and refine the capacity building support which is currently available. DTA Scotland would be happy to expand on our thoughts on how we do this, but in the interests of brevity, we would draw the Committee’s attention to two specific areas.

Firstly, the experience of development trusts throughout Scotland is that if we want to build organisational capacity, we need direct (and focused) investment in
community anchor organisations. We are delighted that the Scottish Government’s Regeneration Unit recently launched an innovative ‘Strengthening Communities’ programme which does exactly this, and while this is being regarded as a pilot to demonstrate impact, DTA Scotland believes that the roll out of this programme would go a long way to addressing the question of capability.

Secondly, DTA Scotland would argue that we need to recognise that the knowledge and expertise increasingly rests, not within external support organisations, but within the development trusts and other community anchor organisations who are turning around failing assets, developing renewable energy projects, managing landed estates, successfully regenerating high streets, taking over post offices, petrol stations and local shops, etc, etc! The implementation of the Community Empowerment Bill presents an exciting opportunity to recognise this, and develop a peer education and peer support programme which taps into and effectively utilises this knowledge and expertise. Such a programme would be incredibly resource efficient in relation to other methods of capacity building, with the added benefit that the main financial beneficiaries would be community organisations themselves.

Are you content with the specific provisions in the Bill? If not what changes would you like to see and why?

While this submission focuses on the Parts 3, 4 and 5, DTA Scotland would like to reiterate a couple of comments made in previous submissions about Community Planning and offer some a further general observation. We also recognise that some of the issues highlighted below may be best addressed within the development of the statutory guidance, but would welcome assurances that this will be the case.

(a) In the interests of clarity and plain English (key principles of Community Empowerment) we request that Community Planning Partnerships (CPPs) are re-named to describe what they actually do. Whatever your views about CPPs, they are strategic public sector planning organisations, and their title should be amended to reflect this.

(b) The suggestion that CPPs will drive the full public sector reform agenda lacks evidential support. While most CPPs are undoubtedly addressing the integration of public services, there seems no evidence that the kind of increased role for communities envisaged by the Christie Commission will be delivered through CPPs. This is a crucial aspect of the public service reform agenda and thought needs to be given to what kind of mechanism or what space is required to facilitate the engagement of what are, effectively, top down and bottom up processes. Whatever this mechanism or space looks like, it would be the view of DTA Scotland that given the, at best marginal, involvement of communities, it is unlikely to be created within CPPs.

(c) Given the innovative nature of the Community Empowerment Bill, DTA Scotland suggest that the Local Government and Regeneration Committee may wish to seek an assurance from the Minister that the legislation will be reviewed within a specific period of time.
Part 3: Participation Requests

This is a crucial part of the Bill, and one which DTA Scotland believes is a potential game changer. However, a lot has been left to regulation, and there is a danger that the processes will be overly complex and inaccessible. We would therefore welcome a commitment to keep processes simple and in plain English, within the guidance.

While welcoming this provision, we would offer the observation that it may be helpful to separate the ability of communities to influence service delivery, from the ability of communities to request to be involved in delivering / co-delivering public services. These are quite different activities. While there is a relationship between both aspects, it would appear to us that a more light touch process would be applicable to the former activity, which should also arguably be available to a wider range of community organisations.

We note that there is no right of appeal for this provision, and would request that this is included in the legislation, or that an assurance is given that this is included within the guidance.

Part 4: Community Right to Buy

DTAS fully supports the creation of a universal community right to buy (CRtB).

We also fully support the efforts of the Bill to simplify and refine the CRtB. Our colleagues in Community Land Scotland and Community Woodland Association have provided detailed comments on the simplification and refinement of the CRtB processes and we would add the weight of DTA Scotland to the relevant comments made on this area within their respective submissions.

While we are pleased to see the inclusion of Scottish Charitable Incorporated Organisations (SCIOs) in the definition of an appropriate community body, we would urge the Committee to request the legal reasons why Community Benefit Societies (BenComs) have been excluded. In our experience many community organisations using a BenCom structure can meet the ‘prescribed requirements’ of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of BenComs from the legislation seems perplexing.

DTA Scotland commends the Scottish Government for introducing a provision for dealing with abandoned or neglected land. However the Committee may wish to explore why SCIOs (and BenComs) are not regarded as an appropriate community body for this provision.

Section 97 requires that the application must specify the owner of the land. If the land is abandoned or neglected, it may not be possible to identify the owner of the land. Does this invalidate the application? Given that the issue of establishing clear title is a common problem when dealing with abandoned or neglected land, how will this be addressed?
Also in section 97, is it possible to clarify what is meant by “the community body has tried and failed to buy the land”. For instance what happens if the community has tried to buy the land, but the asking price bears no relation to the value of the land?

Section 97 places a duty on the community body to expedite transfer on completion of purchase. There needs to be a public commitment of support (both technical and financial) to ensure that this is not too onerous a burden, which effectively prevents the use of this provision.

We also note that in clause 97S, the valuation of land includes separation or disturbance value for the owner. If the value of the landowners wider holding is diminished this is the result of them abandoning or neglecting the land. Could the Bill team explore whether the valuation could be limited to market value only.

DTA Scotland has a concern about clause 97T, which provides owners with a right of compensation from the community body. Surely this should be limited to those situations where the application is granted. If the owner loses land due to their own negligence, it does not seem disproportionate that they have to cover their own costs. There is also a danger that owners sue community bodies for high levels of solicitors’ fees, etc.

Finally, clause 97X, which allows any interested party to refer questions to the land tribunal, seems to add unnecessary delay to a process which already has sufficient checks and balances. Could the Bill be amended to request that Ministers can refer to lands tribunal, if considered appropriate?

Part 5: Asset Transfer Requests

DTA Scotland acknowledges that this area of the Bill has been strengthened in a number of ways since the consultation process. While we fully support the asset transfer provisions, we feel that they could be further strengthened.

DTA Scotland has consistently requested that all local authorities and public bodies should make registers of assets publicly available. This is essential if community bodies are to look critically and pro-actively at what assets would best further their aims, rather simply respond to ‘fire sales’ of surplus assets (many of which will be liabilities).

In the CRtB provision, there is a useful discretion which allows for a body of less than 20 members, but this discretion is not reflected within Section 53 – Asset Transfer Requests. DTA Scotland is currently working with the development on the island of Canna for whom the ability to take on a couple of assets will be critical to sustaining the small population on the island. While this discretion is likely to be used infrequently, it could be crucial for small, marginalised communities, and we would, therefore, seek to see it included.

DTAS would seek assurance that within the statutory guidance there is a requirement to provide relevant information about public sector assets (conditions
surveys, utility costs, etc) to prospective community buyers within asset transfer processes.

The issue of transfer at less than market value is a crucial element within this area of activity, and the Committee may wish to seek an update from the Minister on how relevant revisions of the Scottish Public Finance Manual are progressing. It is imperative that the discretionary power, which local authorities currently enjoy, to transfer assets at less than market value, is extended to other public bodies, and that advice on how to arrive at an appropriate value (perhaps with the help of a third party) is included in the statutory guidance.

The commercial sustainability of an asset transfer will often hinge on the value of the asset and the conditions (eg economic burdens) attached to the transfer. It is essential that there is scope for negotiation on these issues within the asset transfer processes and we suggest that clause 56(2)(a) could be reworded to encourage negotiated settlements.

We welcome the introduction of an appeal provision within the local authority asset transfer process, and would request that appeals are considered by elected members. DTAS would seek an assurance that this is reflected within the statutory guidance. It would also be helpful to clarify whether the appeal process will apply to the valuation of the asset and the conditions attached to the transfer.

Part 6: Common Good

While DTAS welcomes the ‘tidying up’ of Common Good, we would have liked to see this area addressed further within the Bill. We are however satisfied that there will be the potential to address this concern within the Land Reform Bill, which we understand will be brought forward within this administration.

However, within the specific context of community empowerment, there are 2 issues which we would like to highlight.

Firstly, we would suggest that it is essential that common good registers make clear reference to the specific area (town or burgh) from which common good assets came. We would seek confirmation that this will be picked up in the statutory guidance.

Secondly, where a common good asset is, in effect, clearly being transferred back to the community from where it came, we would suggest that the Bill removes the requirement for Sheriff Court approval of the transfer. This adds time and money to what is already a sufficiently costly and expensive process for both the community body and the local authority.

What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?
It seems reasonable to demand that community bodies who benefit from the various provisions are democratic and inclusive organisations, and can demonstrate this in terms of their governing documents and practice.

The provisions of the Bill should create opportunities for all communities. As referred to above, there will be a challenge in doing this in those communities which are more grant dependent and less enterprising, and which currently lack the necessary capacity to embrace the opportunities which the Bill will create. Pro-active intervention may well be required in communities (particularly deprived or disadvantaged ones) which do not have the kind of strong, community anchor organisations necessary.
Local Government & Regeneration Committee enquiry – Community Empowerment Bill
SCVO response
05 September 2014

Summary

- The Community Empowerment Bill is a small part of the change required to enable more empowered communities
- The primary role for government and the public sector in this agenda is a supportive one, which enables community empowerment but does not direct or control it
- Involving people in top-down public sector-led agendas is not community empowerment and can in many instances be disempowering
- The barriers that communities face are rarely just legislative - culture and attitude are much more likely to restrict a community’s development

Comments on the Bill

- To give communities a greater say over local spending priorities, 10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting processes
- We support the introduction of a single, clear process for the transfer of assets to communities from public bodies
- We would like to see the bill amended to include a duty on public bodies to maintain an asset register and publish asset management plans
- We support changes to the land reform legislation which would extend the Community Right to Buy to all communities in Scotland
Agenda Item 2
24 September 2014

- We are concerned that the definition of ‘neglected or abandoned’ used for the new part 3A of the Community Right to Buy could prove an impossible barrier for communities to overcome in rural areas
- The right to improve outcomes of service delivery could disrupt the positive ways that third sector organisations and public bodies already work together

Our response

SCVO has worked extensively on the Community Empowerment Bill since its inception in 2011. This response draws from a large number of discussions held with our members, third sector intermediary bodies and our Policy Committee over that period. Most recently, SCVO convened a group of third sector organisations to discuss what is needed ‘beyond the Bill’ to empower communities. The main points arising from these discussions have been incorporated into this response.

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

The Community Empowerment Bill is one small part of the change needed to enable more empowered communities. It is vital that this Bill is considered in those terms and not seen as the totality of the approach that is required. It is our view that the impact of the Bill itself on community empowerment will be minimal unless there is a wider strategy adopted.

As a starting point it should be clear that governments, public sector bodies, politicians and third sector organisations don’t empower communities. Communities empower themselves. The role of all the agencies involved with this agenda should be a supportive one that does not seek to direct or control.

The Bill includes a mix of legislation that has been brought forward to achieve different purposes. This can make the policy objectives of the Bill seem at times incoherent. By mixing legislation on land reform and asset transfer with measures on community planning and public service reform, the Bill adds to the confusion that exists between community empowerment and community engagement. This is despite page 3 of the Policy Memorandum for the Bill making it clear that the Scottish Government understands the distinction: “The Scottish Government is clear that it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves.”

If it is done well, we support people and communities having a greater say in the improvement of public services and other local decision making processes.
However, involving people in top-down public sector led agendas is not community empowerment and can in many instances be disempowering.

A bottom-up process of genuine community empowerment involves a community coming together collectively and pursuing a set of shared objectives through a collaborative effort. The best expression of this type of empowerment can be seen in the many Development Trusts or Community Land Trusts that have taken their own future into their hands. They set the agenda, decide their priorities and lead the development of their own communities.

The Royal Society of Edinburgh ‘Community Empowerment and Capacity Building Paper’ gets to the heart of the issue:

“The extent of the power shift is less pronounced if a ‘top-down’ approach is favoured, because agenda design remains with the relevant public body, and community action is only sought when the implementation phase is reached. However, this approach falls short of genuine empowerment. The ‘bottom-up’ approach, which sees the identification of local agendas and desired outcomes taking place at the grassroots level, requires that a much larger degree of power and trust be handed to communities. By this approach, it truly is the community which identifies the societal challenges it wishes to see addressed, and it is the community which designs the processes to address these and to deliver the changes it wants. If empowerment is to be an aim of public policy, taking a bottom-up approach will be necessary and inevitable.”

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

The net effect of the Bill on public sector organisations should be positive. Hopefully the Bill will become part of a wider reform of the way public bodies interact with communities. If successful it could lead to greater and more equal collaboration that will deliver significantly improved outcomes. Changing the culture in public bodies to provide a more bottom-up approach to their work is vital. We welcome the contribution of the Commission on Strengthening Local Democracy to this debate:

“A fundamental review of the structure, boundaries, functions and democratic arrangements for all local governance in Scotland based on the principles of strengthening local democratic accountability, subsidiarity and public service integration in order to localise and simplify accountability of public services to local communities.”
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 ability of communities to take advantage of the provisions in the Bill can be shown from the many successful community projects which have already been taken forward. Significant and challenging projects from North Harris to Cassiltoun, demonstrate the scale and diversity of successful projects that have been achieved in communities of all types. However, there are also communities that have been unable to achieve their objectives. The reasons this happens are complex and can range from financial problems to volunteer fatigue. If we wish to see more success, then creating the right conditions for communities to thrive should always be the priority and there are a number of practical ways this can be achieved.

Different communities have different capacities and will therefore need different types of support to realise their ambitions. It is important to recognise that this isn’t as simple as saying disadvantaged or poorer communities will need greater support. Many communities have significant social capital but might need specialist advice to cover a skills gap. Many deprived communities are perceived as disempowered but the reality can be that they are better connected, more united and have the capacity to undertake fantastic projects and influence decision making. Appreciating this complexity and diversity of communities is crucial.

Guidance or support should be accessible to communities and available at the time when they require it. The Development Trusts Community Ownership Support Service is a good example of how to approach this.

There should be a greater priority given to sharing of ideas and experience between communities and bridging skills gaps by establishing connections between communities. Research on Community Land Trusts showed how significant external connections are in creating more resilient communities. Schemes such as the Scottish National Rural Network Project Visits or the DTAS Knowledge & Skills Exchange Fund should be supported to provide further opportunities for establishing these connections.

Funding is hugely important, particularly in the early stages of a community’s development, to support voluntary effort and help get projects of the ground. Finance of this type is best invested directly in the organisations communities have established to progress their priorities. We would like to see additional funding assigned to these ‘Community Anchor’ organisations that perform this role and bring other community activities together.
The People and Communities Fund is a good example of the problems with current funding programmes and the reluctance from Government to trust communities to set their own priorities. Despite being established for ‘community-led regeneration’, the fund proscribes outcomes for applicants to conform to. If outcomes are decided in a top-down way, it is not community-led regeneration. The Strengthening Communities programme is a positive step forward but needs additional support. Funding programmes for empowerment must have open outcomes that allow for the breadth of activity that communities wish to undertake.

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?

Part 1 National Outcomes
We are generally supportive of the proposal to embed Scotland Performs and the National Performance Framework in legislation. This could improve accountability of reporting mechanisms while offering greater opportunity for more people to become involved in the process of deciding outcomes. The key to the success of this proposal is the process that is developed to implement it and how participative and inclusive it is.

Part 2 Community Planning
We question the relationship between these proposals and community empowerment. It is difficult to see how the proposals for community planning outlined in this Bill will empower communities as they mainly concentrate on tightening up and enshrining in legislation processes which have proven to be unsuccessful in improving outcomes or engaging communities.

It is difficult for us to see how the Bill will reverse that trend. A better way to improve community planning would be to build on good practice examples of partnership working which can be replicated across CPPs.

Both third sector and statutory agencies are often at the forefront of producing exemplar projects, responding quickly to change and working closely with the people they support to deliver positive outcomes. We must learn from what made these projects successful, particularly where they involve partnerships between third sector and statutory agencies. We can then use this learning to nurture similar initiatives in other areas - up-scaling, replicating and adapting where needed. We hope the outcomes from the new ‘What Works Scotland’ centre will contribute to this.

Part 3 Participation Requests
There may be some value in legislating for this process. Allowing organisations to initiate a process to improve services could open up discussions between
communities and public bodies. However, its effectiveness will still be dependent on the culture and attitudes within the relevant public body. Improving the understanding of participative approaches within public bodies through training or demonstrations of good practice is more likely to achieve success than bringing forward legislation that could be ignored or regarded as a nuisance by these bodies.

We are also concerned that introducing this process might disrupt the positive ways that third sector organisations and public bodies already work together. The formal process that has been proposed might disrupt positive interactions which already take place if it becomes the main route for engaging the sector in improving public services.

1. We would like to see an appeals mechanism created for this process that provides an additional route for communities to take if their request is declined.

2. We are concerned that the legislation as drafted wouldn’t permit a community to initiate an outcomes improvement process for a service that does not already exist. This would prevent communities from working with public bodies to design and develop a new service in their area that is a priority for them.

3. We are disappointed that this single mechanism is the only concrete proposal for increasing participation in the decision making and the design and delivery of public services. The Scottish Government’s single line in the Policy Memorandum to offer consultancy support for local authorities to develop participatory budgeting in their areas is insufficient and underwhelming.

4. We welcome the Commission on Strengthening Local Democracies’ commitment to participatory democracy:

“The right of individuals and communities to local democracy needs legislative expression through a clear duty in law to support and resource participation in decision making. Democratic innovations such as deliberative assemblies, participatory budgeting and citizen scrutiny of public services should also become the standards by which this is delivered in Scotland.”

“Implementing arrangements for participatory budgeting that go beyond a consultation on predetermined options for budget cuts, and instead focus on local tax and spend priorities.”
5. We would like to propose a considerably more ambitious approach to participation than that proposed by the Bill.

In order to give communities a greater say over local spending priorities, 10% of the total budget for the public sector in each local authority area could be allocated for participatory budgeting. This would have a number of benefits:

- Improved collaboration between public agencies
- Greater participation in democratic processes
- Greater transparency and accountability in public spending decisions
- Improved trust between communities and public bodies
- Greater understanding of the public’s views
- Improved outcomes that genuinely reflect people’s priorities
- Increased social capital

We are under no illusions that this would be challenging to achieve on a practical basis, but it is our view that the benefits would make it worthwhile. Scotland’s experiments with participatory budgeting have so far been small scale, we could be much more ambitious and give the public a real say over the priorities for spending in their area. This could involve a wide variety of models from local authority level processes with large budgets being considered, right down to the neighbourhood level with small amounts being assigned. The schemes that have taken place in Porto Alegre in Brazil were undertaken with as much as 18% of the overall budget allocated.

**Part 4 Community Right to Buy Land**

We support changes to the Land Reform legislation which would extend the Community Right to Buy to all communities in Scotland. We appreciate that there will be different opportunities and challenges in urban communities that require further investigation but we see no reason why they should not enjoy the same rights as rural areas.

1. We welcome the introduction of part 3A which will provide a Right to Buy without a willing seller. This will provide a last resort for communities by giving them the right to buy land if it can be shown to be in the public interest and important for sustainable development.

2. We are concerned that as the legislation stands the current definition of “neglected or abandoned” could prove an impossible barrier for communities to overcome. This will be particularly problematic in rural areas where landlords wishing to avoid coming under the scope of legislation could easily claim that land is being returned to a more natural state.
3. We would like to see the Bill amended to remove the limitation to “company limited by guarantee” in part 3A. Scottish Charitable Incorporated Organisations (SCIOs) should also be able to access these rights as they can do elsewhere in the Bill.

4. While we support this radical change in the underpinning presumptions about ownership, there would be a responsibility on the community to establish that they have the will and capacity to take on the responsibilities of ownership, and that they have pursued other avenues before seeking to exercise this right.

5. The amendments made to part 2 of the Land Reform Act are on the whole very welcome and should simplify the process for communities. However, we would not support the additional requirement for community bodies to make minutes available within 28 days. There is no justification provided for this in the policy memorandum and it would place an unnecessary and impractical burden on organisations.

We would recommend that the Committee pays particular attention to the submissions from Community Land Scotland and Community Woodlands Association whose experience and expertise in this area allows them to give a more detailed consideration to the specific provisions in part 4.

**Part 5 Asset Transfer Requests**
SCVO supports the transfer of assets to communities, provided that the community has an active desire to take ownership of them. Whilst recognising the benefits of asset ownership, we welcome the Bill’s support for management of assets, which will hopefully ensure the most appropriate model is available to each community.

It is vital that communities have as much information as possible prior to taking control of an asset. Knowing the yearly running costs and potential rental value as well as details of impending repairs or maintenance costs would all be vital information to a community’s assessment of whether to obtain an asset and should therefore be easily accessible. Legislation or regulations must ensure that this type of detail is made available to communities prior to any asset transfer so they can make an informed decision.

1. We support the introduction of a single, clear process for the transfer of public sector assets to communities that has been outlined in draft legislation.
1. We are disappointed that the Bill does not provide a duty for public bodies to maintain and publish an asset register. Knowing what assets a public body holds which could be made available for community use would be a significant resource for communities. It would allow them to look at all the assets in their area and identify those which would suit their purpose.

2. As well as maintaining a public asset register we would like to see a duty on public bodies to publish asset management plans. As communities play an increased role in delivering public services and owning and managing assets, they should also have the opportunity to contribute to the development of these plans.

3. If this process is to be successful it will be necessary to clarify the situation around the valuation of assets and how they can be transferred from public bodies at less than market value.

The Development Trusts Association has significant and valuable experience in this area and their response to these proposals should be given particular consideration.

**Part 6 Common Good Property**

We support the introduction of an asset register and proposals to consult on the disposal and use of common goods assets. These assets are valuable to communities, so we support provisions which would create greater involvement from communities in the decisions made about these assets. However, we recognise the limitations of the approach being taken by the Bill and note the recommendation of the Land Reform Review Group: “The Group recommends that a new statutory framework should be developed to modernise the arrangements governing Common Good property.”

This should look to develop a statutory definition of common good, the right for communities to take back the assets that were foregone in 1975 and provide additional rights for communities to own and manage common good assets.

**Part 7 Allotments**

We support the proposals outlined for the provision of allotments by local authorities. Underused and unused land is one way of meeting the demand for growing spaces but sites must be suitable and free from contamination to be viable. This means prioritising and setting aside uncontaminated sites for use as allotments or community growing spaces.

The use of land for therapeutic projects, such as the models developed by the care farming, therapeutic gardening or the men’s sheds movements should also be supported by local authorities, both as a way of making better use of assets and also
as a part of a support for wellbeing and early intervention strategy in partnership with NHS and other agencies.

We would encourage the committee to pay particular attention to the response from the Scottish Allotments and Gardens Society who have done extensive work with their members on these proposals.

**Part 8 Non-Domestic Rates**
We have no comment on this proposal.

**Conclusion**
We welcome the central role that community empowerment now occupies in public policy. However, we have concerns about the priority given to community engagement and the extent to which the policy has translated to change on the ground. Culture and attitude must be addressed and support provided to communities to help them achieve their own ambitions. The primary role for government and the public sector in this agenda must always be a supportive one which enables community empowerment but does not direct or control it.

We are supportive of the introduction of proposals for transferring assets to communities from public bodies but are disappointed that an asset register has not been legislated for. Bringing Community Right to Buy legislation to all communities, introducing an absolute Right to Buy and improving the processes involved in the Land Reform Act is an important step. We are disappointed that Participatory Budgeting was not included in the Bill and would like to propose that 10% of the total budget assigned for the public sector in each local authority are should be assigned to a participatory budgeting process.

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**About us**
The Scottish Council for Voluntary Organisations (SCVO) is the national body representing the third sector. There are over 45,000 voluntary organisations in
Scotland involving around 137,000 paid staff and approximately 1.2 million volunteers. The sector manages an income of £4.4 billion.

SCVO works in partnership with the third sector in Scotland to advance our shared values and interests. We have over 1500 members who range from individuals and grassroots groups, to Scotland-wide organisations and intermediary bodies.

As the only inclusive representative umbrella organisation for the sector SCVO:

- has the largest Scotland-wide membership from the sector – our 1500 members include charities, community groups, social enterprises and voluntary organisations of all shapes and sizes
- our governance and membership structures are democratic and accountable - with an elected board and policy committee from the sector, we are managed by the sector
- brings together organisations and networks connecting across the whole of Scotland

SCVO works to support people to take voluntary action to help themselves and others, and to bring about social change. Our policy is determined by a policy committee elected by our members.

Further details about SCVO can be found at www.scvo.org.uk.
Community Empowerment (Scotland) Bill

Local Government and Regeneration Committee Call for Evidence

Response from Voluntary Action Scotland

4th September 2014

About VAS

Voluntary Action Scotland (VAS) is the umbrella body for Scotland’s network of 32 Third Sector Interfaces (TSIs). We work with TSIs (unitary agencies and partnerships of Councils for Voluntary Services, Volunteer Centres and Social Enterprise Networks) around three keys themes; advocating on their behalf, supporting practice development and co-ordinating with them to help deliver stronger and more resilient communities. An important aspect of the role of VAS is to better inform the Scottish Parliament, Scottish Government and the statutory sector of the challenges and opportunities TSIs, the local third sector and local communities face. We aim to work with stakeholders to ensure that TSIs can play their role in supporting communities and delivering a consistent and valued impact across Scotland.

Introduction

VAS welcomes the opportunity to provide evidence on the Community Empowerment (Scotland) Bill. We see potential within this Bill and believe that if amended appropriately it can have a beneficial effect on the communities our members work with on a day to day basis. At the core of our response is the theme of co-production and co-design, this thread runs throughout our response and is central to empowering communities. We believe that the third sector and TSIs in particular have an important role to play in the successful implementation of this Bill.

As a network organisation we have consulted widely with our members when producing our response, although some points will vary between members. As such we found the most productive way to gather members views was by inviting comment on each section of the Bill, our response reflects this format.
Overall, we do not believe this Bill on its own will produce the empowered communities that we wish to see. However, if taken as part of a wider public service reform agenda and coupled with increased capacity building we believe it provides a useful stepping stone on the journey to real community empowerment. Crucial in achieving this is a culture change within public bodies that moves from a ‘top down model’ of service design and delivery to a ‘bottom-up’ community led model. We acknowledge that legislative provisions can only achieve so much in this regard, they can however provide the impetus to public bodies to move towards more collaborative ways of working.

We believe a culture within the public sector that works closely with local communities in service design and delivery will be hugely beneficial for the public bodies involved and crucially advantageous for the individuals within our society. It will lead to greater community buy-in and services which are more reflective of the true needs of the community.

The areas we have focussed on within the Bill are Part 1 – National Outcomes, Part 2 – Community Planning, Part 3 – Participation Requests, and Part 5 – Asset Transfer Requests

Provisions within the Bill

VAS has made a number of recommendations on provisions within the Bill. These have been broken down by section:

Part 1 – National Outcomes

VAS supports putting the setting of national outcomes into primary legislation and therefore supports the Scottish Government in this regard. However, we believe this section needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre. In order for a participatory approach to be successful the process for setting national outcomes needs to be simple and done in plain English that people in communities can relate to. Throughout this response we are calling for the National Standards for Community Engagement to be adopted in this regard to act as a code
of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.

We would also advocate for Parliamentary review of the outcomes at the point of them being reported on. This would allow for greater scrutiny and transparency and would help hold the Scottish Government and public bodies to account for achieving the outcomes. Finally, we consider the wording of ‘having regard for’ the outcomes when carrying out functions to be not assertive enough at present and would welcome stronger language being used.

Part 2 – Community Planning

Overall, VAS is seeking two key changes in the Government’s approach. Firstly we believe the outcomes for CPPs must include tackling inequalities in outcomes and secondly that legislation must ensure that community involvement is not confused with third sector involvement but that both are understood and specified.

VAS argued in our response to the consultation on the draft Bill that in order for community planning to be effective it must undergo significant reforms, making it a community led, collaborative, budget sharing, bottom-up process. We are therefore concerned about the limited progress that has been made in the current iteration of the legislation.

The reforms needed in community planning extend far beyond this Bill, however, we do believe it is necessary to make changes to the Bill at present in order to facilitate these longer term reforms. Therefore there are a number of additions and amendments that we believe would improve the Community Planning section of the Bill:

- At present Third Sector Interfaces are represented on all 32 CPPs in Scotland. This is a position strengthened by the ‘Agreement on Joint Working on Community Planning and Resourcing’ released in September 2013 which states: “Making the most of the total resources available locally means ensuring that the Third Sector Interface is a full community planning partner and drawing on the huge commitment of all those, including volunteers, who work to improve communities.”. VAS is therefore keen to ensure legislation

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recognises the role of the third sector in community planning via the support of Third Sector Interfaces (TSIs), this role is not currently recognised or alluded to within the Bill. We acknowledge that ‘community bodies’ have been mentioned, and welcome this development, but are unclear as to what this refers to. Regardless of its definition we would advocate for clarity in guidance of the role of Third Sector Interfaces (TSI) in connecting and developing the third sector to community planning: bringing the voice and assets of the third sector to the table. This would ensure clarity, responsibility and accountability for the TSI.

The definition given in Section 4(8) does not seem to encompass the unique role TSIs play in our communities, connecting and enabling voices and assets from the third sector and bringing these to the community planning table. Whilst we do not wish to see duties placed upon Third Sector Interfaces, as they are not statutory bodies, we believe that in order to ensure they are a mandatory member of CPPs it is vital that there is a mechanism within the Bill for them to be written into guidance, perhaps by including reference to an advocate for the local third sector on the face of the Bill, this in turn would be described in guidance as the Third Sector Interface. If the Scottish Government fully believes in creating a culture change in the way resources are managed and services designed and delivered it needs to provide parity of esteem to TSIs as a voice for the local third sector. Community Planning should be about harnessing the totality of a localities assets and using them effectively to improve person centred, co-produced, outcomes, this is not possible without the inclusion and recognition of the third sector. We believe it is possible to write an advocate for the third sector into legislation whilst excluding them from certain duties placed upon statutory partners. VAS will suggest amendments to this effect.

- In order to secure the input from community bodies that is necessary to inform community planning there needs to be a strong community capacity building element, however, this does not appear to be present in the current iteration of the Bill. The duty on Community Planning Partners should extend to beyond merely securing input from community bodies to pro-actively developing the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process. There needs to be an acknowledgement of the role the TSI plays in third sector engagement, involvement and capacity building. It would be possible to amend 8.1(b) to include a responsibility on statutory partners to provide adequate resourcing of community and third sector involvement. There should also be an onus on community planning partners to produce materials at CPP level in an accessible and timely manner to allow smaller organisations the opportunity to process and prepare their response in order for them to contribute fully to the CPP process. Further to this a mechanism needs to be introduced to allow for a right to appeal should a community bodies application to participate in a CPP be rejected.
The current wording around involvement of community bodies is too ambiguous, stating that the CPP must ‘make all reasonable efforts to secure participation of such community bodies in community planning’ and ‘consider which community bodies are likely to be able to contribute to community planning’. The language still leans towards top-down involvement rather than bottom-up processes; involvement is on the terms of the statutory agencies, at the very least we would be advocating guidance on the Bill once enacted to define more clearly what constitutes ‘reasonable effort’. Important in this is that legislation should outline that the CPP must ensure demonstrable community involvement (beyond community bodies solely) in the development and scrutiny of CPP progress against outcomes. Third Sector involvement in this regard should be included independent of community bodies, third sector and community bodies are not the same thing and therefore the role of both, and needs to engage both, needs to be stipulated individually in relation to section 4.5 and section 5.3. The use of mechanisms such as participatory budgeting and citizen’s juries are two methods by which the CPP could demonstrate community involvement, VAS would encourage the committee and Scottish Government to consider how these approaches could be incorporated into guidance.

The Bill does not make it clear whether invited community bodies will be considered as full CPP members or if they are just there on a consultative basis. If only on a consultative how do they guarantee that their views have an influence on the CPP?

A key element of local outcome improvement plans (5), in our view, is demonstrating how that outcome will help tackle inequalities. Therefore, we would argue that the Bill should make it mandatory for local outcome improvement plans to outline how inequalities in an outcome will be tackled (5.2(b)). Further to this, we believe it would be beneficial for outcome improvement plans to be able to demonstrate the involvement of the community and third sector in that locality (5.3) rather than just outlining who to consult.

The VAS vision for community planning extends beyond what can be accomplished through this Bill and we acknowledge that there will be challenges in achieving this vision, particularly around a culture change in sharing resources and co-producing outcomes. We hope this Bill can be a step in the right direction and will continue to call for a much improved, community focused, version of community planning.

Part 3 – Participation Requests
VAS welcomes the inclusion of participation requests in the Bill and believes it is a move in the right direction in terms of communities having a say in the design and delivery of public services. We would emphasise the need for participation requests to be a simple process to ensure high levels of participation, key to this is the community capacity building element we proposed in the community planning to section that will help secure participation from a wide cross-section of society. The third sector has significant knowledge and expertise to bring to the table and can help significantly improve outcomes, however, the system must be simple enough that it does not overstretch their current capacity and resources as this may detract from their current role. The onus must be placed upon statutory bodies to actively pursue and resource the input from relevant community and third sector organisations in order to improve outcomes for all society. We welcome the removal of the need for community bodies to provide evidence of how their inclusion in an outcome improvement process would be beneficial, as was written into the draft Bill.

There are certain elements in this part that we believe could be strengthened further. Section 14 lists criteria describing a community-controlled body, we have concerns this is overly prescriptive and that a body having a written constitution would suffice in the majority of cases. Added to this is the lack of an appeal process should the public service authority reject the participation request. This leads to a lack of transparency and accountability and goes against the general principles of the Bill. We would also like to a see a duty on public service authorities to have to publicise the existence of the participation request mechanism and encourage and support community bodies to become actively engaged.

Consideration must be given to the role of ‘arm’s length organisations’ (ALEOs) and their potential role in participation requests and throughout the Bill. We are currently unclear of their potential role and are keen to ensure any role they do have is not to the detriment of the communities and local third sectors potential impact.

Again, this section would benefit from the adoption of an updated set of National Standards for Community Engagement in primary legislation. This is very much in line with the spirit of the Bill.

Part 5 – Asset Transfer Requests

A number of public bodies are already involved in schemes which work towards transferring assets from the public boy to community bodies. This Bill looks to extend this further, placing this approach into legislation and opening to the whole of Scotland. It gives the initiative to communities to identify property they are interested
in and places a duty to agree to the request unless they can show reasonable grounds for refusal.

VAS welcomes this approach as it extends rights and potentially releases much needed assets to communities. The principles are therefore sound but could still be refined further. VAS believes an asset register should be collated by statutory bodies and made readily available to the public, creating a transparent asset transfer system, along with a duty to publicise when a transfer request has been made. This should be coupled with a transparent approach to the current state of assets and whether they are in a suitable condition to be transferred to community organisations. Clarification also needs to be given over the process whereby more than one community body initiates an asset transfer request.

Finally, one area has already reported the transfer of local authority assets to an arm’s length organisation on a significant scale. We have concerns that in a situation where a public body wishes to protect property and withhold it from possible asset transfer that they may also be inclined to place these assets in an arm’s length organisation or trust and therefore exclude it from this piece of legislation. This is clearly not in the spirit of the Bill and does nothing to empower communities, therefore we are calling for clarification on the position of assets that were previously controlled by a public body but have been voluntarily transferred to an arm’s length organisation.

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Community Empowerment (Scotland) Bill: Written Evidence on the provisions of the Bill.

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I am grateful for the opportunity to contribute to the scrutiny process for the above Bill in written and oral form. I support the development of such a Bill - primarily because of the symbolic support it lends to the idea of giving community bodies a more central role in in decision making about the nature and quality of the public services they use. I also support the opportunity it affords to such bodies to take on the management of land and assets where they so wish. The fact that the Bill envisages that the community empowerment agenda is of relevance to communities across Scotland is also to be welcomed. As a consequence the Bill might be expected to challenge the expectation that only disadvantaged communities should be required to voluntarily give of their time and effort if they are to achieve the outcomes from public services that they need.

However, I am concerned that the Bill does not centrally address the issue of inequality between communities. This concern relates mainly to the potential impact of the new right to request participation. It relates in particular to questions 1 and 3 in the Call for Evidence.

Historically a key driver of community development approaches to securing more effective participation has been the belief that more and effective participation might contribute to narrowing the gaps in resources, attention, opportunities and outcomes between more and less disadvantaged communities. However, I am concerned that provisions in the Bill may exacerbate already existing social and economic inequalities by further empowering those who already hold or have access to power. While the Bill and the associated Policy Memorandum acknowledge concerns voiced during the consultation process that communities are not equally equipped to take advantage of the provisions in the Bill, it lacks specific provisions designed to address these concerns. While I appreciate that the Guidance which will be drafted to support the Bill may address this issue in part, I would like to take this opportunity to suggest:

1) That the Bill itself should more explicitly recognise that participatory and empowerment processes can empower the powerful. This recognition might be expressed via a clear commitment to hold public bodies to account if they fail to:
a) take action to actively promote and provide additional support to participatory processes with disadvantaged communities at levels beyond that provided to better off communities;

b) consider the wider implications of participation requests on the outcomes likely to be experienced by other, particularly more disadvantaged, communities as a result of granting the request. In order to achieve this I would suggest an additional provision which might also place a duty on public bodies – when faced with a request to participate from one community body - to identify and invite other community bodies with an interest in the outcome to participate in the outcome improvement process. This would supplement Paragraph 49 of the Bill in which public bodies are facilitated to aggregate different requests into one outcome improvement process.

2) That the Guidance which accompanies the Bill should be centrally concerned with identifying specific measures, supports and good practice which could help ensure that disadvantaged communities are not further disadvantaged by aspects of the Bill. In particular it should make a clear and prominent link between the new rights in the Bill and the duties set out in the recent CLD Regulations.

3) That the Scottish Government should put in place a process of evaluation and review of the outcomes of the Bill designed to ensure that the new right to request participation does not result in the displacement of existing community development and engagement activities undertaken by public bodies with disadvantaged community groups. There is a need to build safeguards into the implementation of the Bill which are focused on ensuring that it results in additional levels of engagement in processes to improve the outcomes on public services, particularly amongst disadvantaged groups.

I would like to justify these suggestions with brief reference to the evidence of a series of research studies I have conducted over the past 10 or so years which have sought to understand the processes by which ‘middle class capture’ of public services can occur. The studies build on long standing concerns in both the policy and research communities that better off social groups are often the main beneficiaries of public services. The research offers some insight into how the participation of affluent groups in processes which can impact on the distribution of resources and benefits from public service provision can sustain and exacerbate inequalities. The studies have largely been conducted in collaboration with colleagues from the University of Glasgow and Heriot Watt University.
A key strand of this work has focused on the distribution of local government environmental services. One study involved a forensic analysis in three case study authorities of the allocation of street cleansing resources in order to understand the differences in workloads between staff providing services in more or less affluent streets. The distribution of staff workloads was then related to cleanliness outcomes. In one Scottish authority, there was clear evidence that better off streets enjoyed higher levels of street cleansing resource than streets which were home to more disadvantaged households. Thus, staff servicing better off streets had smaller workloads in terms of street length and per capita population levels than staff in deprived streets. These better off streets also enjoyed the best cleanliness outcomes. There was evidence that this pattern of resource distribution and outcomes had also previously been the case in one of the English case studies.

Evidence from senior and local managers, as well as with ‘front line’ operational staff, helped to explain this skew of resources and outcomes. It appeared to be a consequence of the participation of better off individuals and community groups in discussions with the local authority over the nature, quality and quantity of street cleansing services. These discussions generally took the form of complaints from individuals and community bodies about the quality or quantity of service received, or took place in fora such as community council meetings. While they were not the result of formal participatory processes, the discussions were focused on improving the outcomes of a particular service for a particular community. The evidence from staff suggested that the regressive pattern of workload allocation evidenced was not the result of a deliberate strategy to skew resource to better off areas, but was rather a consequence of numerous small adjustments to workloads made over a number of years to accommodate the demands of better off communities.

This example illustrates some of the challenges that public authorities will face as they try to be responsive to requests from community bodies to improve outcomes. In the example, improvements in the outcomes in some streets were at the expense of the quality of outcomes in other streets. Given that resources are limited and require to be rationed – and the extra demands placed on rationing by austerity – then the processes encouraged in the Bill could increase the degree of challenge faced by public bodies in this respect.

Indeed, question 2 of the Call for Evidence asks about the advantages and disadvantages of the provisions in the Bill on public bodies. A key disadvantage may be that it increases the expectations held about public bodies with respect to their capacity to improve outcomes. Such bodies may feel compelled to divert resources to particular places or populations, whether or not improving these outcomes for this particular community is a strategic priority. Our research suggests that a key part of the work undertaken by those working at a range of levels within public services involves ‘managing the middle classes’: that is, resisting or accommodating the demands of an often vociferous, articulate and well connected social group.

The need for substantial investment and practical support for disadvantaged communities to avail themselves of these new rights is also evidenced by research conducted with Peter
Matthews at the University of Stirling. In this work, we demonstrate that there is a systematic bias within many public agencies to be more responsive to the ways in which the ‘sharp elbowed middle classes’ interact with the local state. Our synthesis of research evidence from the UK, US and Scandinavian countries suggested that the language, modes of argument and social connections of better off groups produced an inadvertent ‘alignment’ between these groups of service users and those making decisions within public services. We also argued that the practical support historically offered to support community participation in poorer communities (community development and CLD approaches focused on building competencies and confidences) can help to offset these disadvantages. In particular, it can help individuals and organisations in poorer communities to develop the modes of speaking and acting which predispose service providers to take their expressed needs and demands seriously – to deem them ‘appropriate’ according to their own value set and world view. This is a key reason for arguing for real practical action and investment in supporting more disadvantaged social groups.

One final issue is in relation to asset transfer requests, and the concern that public bodies may use the provision in the Bill to facilitate the offloading of liabilities rather than assets. My ongoing work with English local authorities involved in ambitious asset transfer programmes as part of their approach to managing severe budget cuts suggests that this will be a real danger in some places. For example, senior officers in one case study council were quite willing to admit on the record that a driver of the asset transfer programme was to transfer the risks, liabilities and future costs of facilities such as community centres and sports pavilions from the council to other bodies. Para 77 of the Policy Memorandum suggests the secondary legislation will stipulate what information public authorities will be required to provide to community bodies before they decide to request the transfer of an asset. The Memorandum states that this requirement “may include, for example, information about maintenance costs and energy efficiency”. I would argue that this secondary legislation must require public bodies to provide exactly this information.
COSLA’s response to the Local Government and Regeneration Committee’s call for evidence on the Community Empowerment (Scotland) Bill.

Introduction

COSLA welcomes the opportunity to submit written evidence to the Local Government and Regeneration Committee on the Community Empowerment (Scotland) Bill. Please note that COSLA is submitting evidence to the Finance Committee on the resources issues created by the Bill separately.

Having worked closely with the Minister and the Scottish Government Bill team there was little surprise in the proposed legislation. COSLA is supportive of the Scottish Government’s ambition to empower communities and as such welcomes the Bill. In this spirit, there are several areas in which the Bill could be strengthened and we have outlined these below.

General Remarks

COSLA’s vision statement seeks to put the position of local self-government on a constitutional footing as soon as practical. The constitutional debate elicited by the forthcoming Referendum has already been identified as a key opportunity to strengthen local government and democracy, regardless of the outcome of the vote itself. COSLA welcomes the Scottish Government’s willingness to enter into discussion on this matter.

COSLA strongly believes that the most practicable way to do this in the short term is by giving life to the European Charter of Local Self-Government through the enactment of domestic legislation. The Charter is a part of the binding Council of Europe treaty framework intended to protect human rights and democracy across the 47 members. It is a requirement for candidate members of the European Union to sign up to. The European Convention on Human Rights (ECHR) is another element of the same treaty framework. All existing members of the EU have signed and ratified the provisions. In the majority of cases the provisions are reflected in the member states’ constitutions.

As is well known, the United Kingdom is unusual in not having a written constitution. The position of local government is defined in a myriad of pieces of legislation, and there is no right to local self-government in Scotland or the UK. We accept that there is evidence of both the UK and Scottish Parliaments being prepared to take forward
legislation that enacts some elements of the Council of Europe treaty frameworks. For example, the ECHR provisions are embedded in UK legislation through the Human Rights Act 1998. It places obligations on public bodies to observe its provisions, and is binding on the legislation from the Scottish Parliament. However, the main issue here for COSLA is how local democracy is protected, and in particular how the European Charter on Local Self Government is made available through the Scottish domestic courts, as a means of fully enacting its various articles.

We recognise that the Scottish Government has repeated its commitment to embed local democracy and the Charter’s provisions in a constitution should there be independence. However, regardless of the outcome of the referendum, COSLA strongly argues that local government should be protected. Protection within a constitution would be our preferred method as we believe that a legislative approach could, theoretically, be eroded through later Parliamentary decisions. Nonetheless, the protection conferred through legislation is still significant and something that we firmly support. We recognise a willingness to take such action is hugely symbolic and the political cost to a party or coalition wanting to overturn rights to local democracy would be significant and in all likelihood make it deeply unpopular.

Consequently, COSLA's position has been, and remains, that the European Charter should be reflected in domestic legislation and that the natural place for this to happen is through the Community Empowerment (Scotland) Bill. Should there at some point in the future be a written Constitution for Scotland or the United Kingdom it would be our expectation that the Charter provisions would be reflected in such arrangements.

Meantime, placing the right to local self-government on a statutory footing in Scotland would give the whole of the Charter a formal legal status in Scotland, ahead of the rest of the UK. While this would fall short of the longer term constitutional embedding we would ultimately argue for, it would set an important precedent and demonstrably reflect the Scottish Parliament’s commitment to local democracy. COSLA suggests including something like the following in the legislation as an intermediate step:

“Ministers of the Scottish Government while exercising their functions must observe and promote the principles and provisions of the European Charter of Local Self-Government (1985) - ETS 122”

This would be a simple way of giving effect to the Charter’s provisions, allow steps to be taken incrementally to consolidate the right of local people to a greater degree of autonomy in the way our communities manage their own affairs, and ultimately allow the possibility of a legal challenge to be made, should the need ever arise. By placing a duty on Scottish Ministers that refers to external treaties / legislation, Scotland would be adopting a similar approach to that already used for the European Charter of Human Rights in UK legislation.
We acknowledge the work that may be required in this area and are keen to develop this in partnership with both the Scottish Parliament and Scottish Government. Furthermore, we are aware that the Commission for Strengthening Local Democracy have provided helpful recommendations in this area which will help inform debate.

Any part of the legislation proposing new duties on Local Authorities would require to be appropriately financed and resourced by National Government and cost neutral to local government.

Part 1 – National Outcomes

While in principle COSLA recognises the right of National Government to set outcomes for Scotland, we have a number of concerns around the proposed legislation.

COSLA very much welcomes the outcome focus approach taken in this part of the legislation. However, we are disappointed to note that while service delivery is undertaken by local government, this is not reflected in the legislation or policy memorandum. Local government remain committed to an outcome focused approach through Community Planning Partnerships and Single Outcome Agreements and already have a good strategic framework in place. COSLA would welcome explicit recognition of the importance of partnership working between national and local government when setting outcomes which affect locally delivered services.

Part 2 – Community Planning

COSLA welcomes the proposals to improve the Community Planning process by requiring all statutory partners to participate equally and fully in the process, through legislation. Given the joint working COSLA and the Scottish Government have undertaken, culminating in the Joint Statement of Ambition, we very much welcome and are supportive of the Scottish Government choosing this Bill as the route to deliver new duties.

COSLA continues to welcome the opportunity to level the playing field, recognise that Community Planning is a genuine joint endeavour that encompasses the whole of the public sector and believe that the democratic mandate of councillors underpins the lead role of local government in the arrangements.

COSLA welcomes the additional partners named in the legislation as statutory community planning partners. However, we still question whether the legislation includes all the relevant partners that should be at the Community Planning table. While we advocate that local Community Planning Partnerships would be best placed to make these decisions, we feel that other NDPBs, such as the Scottish Prison Service and Regional Colleges, should also be considered as statutory Community Planning Partners, wherever they are necessary to delivery of particular agreed outcomes in CPP areas. In particular, with reference to the forthcoming changes in the area of community justice, COSLA notes that under the lists of
Relevant Authorities and Public Services Authorities, key justice partners are not explicitly listed.

Community Empowerment, in relation to improving justice within communities, will fall short without the critical input from partners within justice, in particular the Scottish Prison Service, the Crown Office and Procurator Fiscals Office and the Scottish Court Service. More generally, the duties regarding CPP Partners are welcome, including the encouragement to commit resources to the delivery of CPP outcomes, however, it is difficult to see how this can be effectively enforced.

Part 3 – Participation Requests

COSLA notes that some of the proposed provisions here concerning community engagement significantly reflect the content of the Protocol to the European Charter of Local Self-Government. The charter protocol seeks to increase the local accountability of government through the adoption of measures such as citizens’ panels, community petitioning, and similar measures. In essence, while Scottish Ministers are extending the application of the protocol to all parts of the public sector a legitimate question is raised over whether it is right that Ministers should progress this area without protecting the services and representative democracy that the engagement is trying to influence.

Nonetheless, COSLA agrees that public bodies should consider requests, so long as they are reasonable, give reasons for their decisions, where granting those rights to state what conditions are attached to them, and, when declining to grant, stating reasons for not doing so.

It is difficult to predict what the implications of this new requirement on public bodies will be. At one extreme it could lead to large number of requests coming to councils. In particular, in areas of public service change where difficult decisions are being made by elected members such as opposition to the closure of local facilities or services which are a result of the financial pressures being experienced by councils. This could be similar to the current Freedom of Information process and we therefore have some concern over the potential administrative burden that these new duties could create. COSLA is clear that the cost emanating from these new duties require to be fully funded and cost neutral for councils. As indicated earlier in our submission, COSLA will be responding separately on the financial memorandum to this Bill directly to the Finance Committee, however, it is important to stress that we have concerns around being able to quantify the demand for this legislation and in turn the costs that will be incurred by Local Authorities.

Part 4 – Community Right to Buy Land

Part 5 – Asset Transfer Requests
The legislation is increasingly relevant and important to Local Authorities, in particular in the areas of culture and leisure. Given the current fiscal challenges presenting local government many Local Authorities are already working on the development of the Community Sports Hub model with sports clubs, teams and joint management arrangements. In addition to developing community empowerment in the sports sector, the culture sector have also started to consider these types of approach in looking at property rationalisation in terms of community halls, village facilities and cultural facilities, such as museums.

This work is highly reliant on council support and provision of community capacity building assistance, which can be resource intensive. Initial capital investment is also required to cover the cost of the standard lease arrangements required for asset transfer.

COSLA notes that under Part 5, section 53 (2)(b) of the Bill that on the winding up of the company and after the satisfaction of its liabilities, its property (including any land, and any rights in relation to land, acquired by it as a result of an asset transfer request under this Part) passes to either another community body, a charity, a community body approved by Scottish Ministers, a crofting community body, or should no such body exist, to the Scottish Ministers or a charity of choosing by Scottish Ministers. COSLA are very firm in the view that should the asset have been acquired from a Local Authority, then that Local Authority should have a first refusal option to have the asset returned to them. COSLA considers that this section precludes Local Authorities far too early in the process. After all, the Local Authority would be the continuing body with the experience, knowledge and skill around the management and ownership of the asset.

We are supportive of the differentiated approach between Local Authorities and other public bodies outlined in the legislation. COSLA are firmly of the view that as local government is democratically accountable to the electorate there is no need for the requirement to have their decisions appealed, where community requests are declined, via an appeals process involving Scottish Ministers. However, Part 5 Section 56(7)(b) suggests that Scottish Ministers could still override the decision of a Local Authority should a Local Authority and community body be unable to agree a timescale between themselves regarding agreement to an asset transfer request. This would appear to go against the intention of section 58(2)(b) and on this basis, therefore, we would welcome changes in the wording of this section of the legislation which is reflective of the Bill’s intention.

It is clear that there is a currently unquantifiable administrative and financial impact on councils with this part of the legislation. However, it is imperative that these new duties on Local Authorities are appropriately financed and resourced by Scottish Government and cost neutral to local government.
Part 6 – Common Good Property

In line with current accounting good practice guidelines, Local Authorities should already hold a register of their common good assets therefore COSLA do not consider that this aspect of the legislation should be overly onerous for councils. However, COSLA repeats the point made in regard to other legislative proposals in the Bill, whereby the administrative burden around the consultation with Community Councils and Community Groups in the establishment of the register and any disposal or any change in use of common good property is unknown and we seek assurances that the cost of this would not fall on the shoulders of the Local Authority.

Given that the Bill has a section dedicated to the issue of Common Good, it would appear to be an oversight that the legislation does not seek to address what is commonly referred to as the "Portobello School" issue. As the Committee will be aware, in the case of Portobello the Court decided that where land is identified as inalienable common good land a Local Authority cannot appropriate it for another function. In this specific case the proposal was to convert the use from a park to a school site. This contrasts with the position on the sale of common good land where councils are able to dispose of common good land with the approval of the court. To enable the land in Portobello to be used for a new High School it has involved an Act of Parliament, which seems somewhat disproportionate and time consuming.

COSLA therefore supports SOLAR's view that a very straightforward change to existing legislation (Section 75 of the Local Government (Scotland) Act 1973) would enable the use of common good land to be approved by the courts in the same way as a sale can be. The change to section 75 of the 1973 Act would require an additional provision being included in Part 6 of the Bill. To achieve the change would actually involve minimal amendments. All that would be required would be the words "appropriate or" to be inserted at four locations in section 75(2) and in one location in section 75(3) of the 1973 Act.

While COSLA appreciates that the Minister may be wary about being seen to make it easier for councils to change the way common good land is being used, all the above suggestion does in practice is to bring change of use into line with the existing provisions for disposal.

Part 7 – Allotments

COSLA are firm in the view that individual Local Authorities are best placed to respond to the detailed legislation proposed in the Bill. In assessing the legislation, consideration needs to be given to the very great range of circumstances, including geography, of Scottish Local Authority areas. We recognise that Scotland is a diverse country made up of Islands, urban, rural, and city areas. Demand for allotments and potential availability of land therefore differs significantly between Local Authority areas. On this basis COSLA feels strongly that the trigger point
requiring Local Authorities to take reasonable steps to provide further allotments is arbitrary and not practical for all Local Authorities.

Furthermore, while a trigger point for the creation of more allotments is specified within the legislation we feel it is important to stress that any proposed new allotments would be subject to the normal, rigorous planning process. Therefore, it is important to note that the provision of additional allotments is not determined by the trigger point specified in the Bill alone.

The Bill proposes that allotment users will be able to sell on surplus produce. COSLA considers that, on this basis, the cost of remediation of contamination should be an explicit ground for refusing a request for land to be given over for allotment use. We have significant concerns around the potential legal implications this could cause Local Authorities.

We note the duty on Local Authorities to produce an annual allotments report. While COSLA does not disagree with this measure, we consider the level of detail set-out within the legislation to be too prescriptive and micro-management.

We again stress that caution should be exercised around the proposed new duties which place an additional administrative burden on councils. COSLA is clear that the proposed duties require to be adequately resourced by the Scottish Government.

Part 8 – Non-Domestic Rates

We note that this section of the Bill contains proposals outlined in the recent consultation on business rates reform “Supporting Business, Promoting Growth”, which includes a new power for local reliefs. COSLA continues to welcome this, as it is very much in line with COSLA’s vision for increased local flexibility on funding and local taxation powers.

Conclusion

Overall, COSLA’s main concerns focus on the lack of opportunities provided by the Bill to secure the statutory protection of local democracy and local government.

Scottish Local Government is also concerned that all the proposals are properly funded and cost neutral for councils. It is imperative that any new duties on local government be fully funded by national government. Furthermore, COSLA continues to stress the importance of ensuring that a reasonable time period be set aside for changes and transition to take place.

The Bill makes repeated reference to numerous regulations and guidelines and COSLA welcomes the opportunity for officers to work closely and constructively with Scottish Government officers around the detail and production of these. We look forward to participating in the ongoing debate and discussion in an active and constructive manner and recognise that it is in all of our interests that we get this legislation right.
Local Government and Regeneration Committee: Community Empowerment (Scotland) Bill

September 2014

Introduction

The FSB is Scotland’s largest direct-member business organisation, representing around 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

Small businesses are at the heart of Scotland’s communities. Micro and small firms account for almost all of our businesses and provide almost half (42%) of all private sector employment.\(^2\) These businesses provide local jobs and training, sell goods and deliver services in communities across Scotland, from city centres to remote villages. Accordingly, the role of small businesses needs to be considered in any discussion about empowering local communities.

Some of the measures in the Bill will directly impact upon local businesses but more likely are indirect opportunities or threats for firms. Our response discusses this in more detail, as well as setting out thoughts, from the small business perspective, on the community planning process.

Background: community planning and businesses

From the beginning, the FSB has been involved in the community planning process across Scotland. A number of FSB members attended Local Economic Forums, the remnants of which often formed economic sub-groups or partnerships at local authority level. We now have a number of FSB members and staff representing the small businesses community on such groups, which are usually the main input of economic development issues to the community planning process. In a very limited number of cases, FSB representatives have been invited to sit on the community planning partnership (CPP). Broadly, the FSB continues to support the principle of community planning and recognises the efforts made to embed an evidence based, outcome focused approach. However, we have some concerns about the effectiveness of the process and the involvement of the private sector:

- Feedback from our members suggests that business involvement still largely relies on the traditional approach of inviting them to attend committee-style meetings. Business attendees express frustration that meetings can be

process-driven and high-level; focusing on updates on strategies and SOAs (we have been told that 100+ pages of paper is not unusual in some areas). They often feel they have little to contribute to such discussions and that meetings achieve little.

- While such processes are probably unavoidable, they are perhaps not the best way to get local businesses involved. Busy small businesses can be difficult to engage with, so a number of approaches will be required. In our experience, small businesses prefer to get involved in specific projects or groups, such as Leader or traders groups, and it might be better to consider how such groups can more effectively contribute to the community planning process. In recent years, and particularly following criticisms made about economic development and community planning by Audit Scotland¹, local authorities have placed greater emphasis on improving business involvement.

- We are very disappointed that, based on our experience from different parts of the country, community planning has failed to deliver a more co-ordinated approach to services for small businesses from the public sector. For example, multiple new initiatives to encourage employment developed and deployed by public bodies in isolation. The development of binding ‘plans for place’ are welcome, but whether they encourage local and national partners to overcome the apparent clash of priorities and funding issues remains to be seen.

- It may no longer be possible for representatives from the FSB, or similar non-delivery or community organisations, to sit on CPPs if formal requirements are placed on these bodies without a guarantee of exemptions from certain duties. For example, our representatives cannot make any commitment to provide resources to the CPP.

The Bill

1. Community planning

As outlined above, the Bill should avoid placing any unnecessary restrictions on certain community planning partners. Further guidance on partners which should be excluded from certain duties e.g. community representatives may be helpful.

2. Participation requests

We welcome these provisions and believe there may be opportunities for local business groups (e.g. tourism groups) to consider the opportunity to become involved in an outcome improvement process in relation to relevant local services.

¹“The role of community planning partnerships in economic development”, Audit Scotland, November 2011
3. Right to buy and asset transfer

The FSB understands the rationale behind efforts to simplify how communities can use vacant or underused public sector assets. In some areas, such as town centres, this approach could have a positive impact. We would also like to see greater consideration of the opportunities for small businesses to be given the opportunity to manage or occupy certain assets. In some areas, supporting a business to run a service from a public asset may be a more sustainable option since the business might have experience and could provide employment. However, transferring assets to communities could also present a threat to small businesses.

Firstly, if the transfer of an asset is accompanied by any form of public funding, a rigorous test of displacement is required when assessing the proposed activity. For example, using a vacant building to fund community-run commercial activity which directly competes with existing businesses (or may do so at some point in the future) is particularly unhelpful for our high streets.

Secondly, it should be a statutory requirement that the asset owner must identify and consult with any business or organisation using the asset, prior to agreeing any transfer request. We are aware of concerns from businesses that this does not always occur and a change in ownership or conditions may have a huge impact on businesses which rely on the asset. This might include assets such as parks or open spaces, filling stations, halls, cafes/visitor centres or piers. Notwithstanding the business impact, problems arising from lack of consultation and agreement, can lead to community breakdowns, especially in small communities.

Lastly, while recognising the potential community benefit of purchasing neglected land, small business owners who own local land or buildings might be alarmed at the prospect of losing what is often a significant medium to long term investment. The Scottish Government should ensure that small landowners, without the means to afford expert legal support, are not left unprotected.

4. Non-domestic rates

In our response\(^4\) to the Scottish Government’s 2013 consultation on non-domestic rates we highlighted the need for relief schemes in an arbitrary property-based system.

We suggested that the current system of reliefs is varied and complex but, without question, the key relief for small businesses is the Small Business Bonus Scheme (SBBS). Having long argued for a scheme to address the disproportionate burden of rates for small businesses,\(^5\) the FSB warmly welcomed the introduction of the SBBS in 2008. This relief has been a lifeline to small businesses in exceptionally challenging economic times. A survey of our members, published in 2013, indicated that 75% of respondents are receiving some level of discount to their rates bill as a

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\(^5\) As a percentage of profit, rates are around 3 times higher for small businesses, compared to larger firms. See: “Evaluation and Effectiveness of the Small Business Rates Relief Scheme”, DTZ Pieda, December 2004.
result of the SBBS. Indeed, 52% of FSB members told us they now pay no rates at all because they receive 100% relief.

In our comments to the Scottish Government, we highlighted two categories of small business often excluded from the SBSS. Firstly, those whose business model requires larger (and usually higher value) premises, such as hotels and nurseries. Such businesses may operate on tight margins, with relatively modest turnover yet their RV excludes them from support for small businesses.

Secondly, small businesses operating in higher value locations, where RVs are higher, like city centres, are also excluded from support. We understand that the system has to have thresholds and some businesses will always be on the wrong side of the upper limit, but many businesses currently feel they are denied assistance intended to support small firms.

We suggested that local discretion over extending reliefs may be one way to support small, independent businesses. However, we remain cautious about the likely impact of this new power, particularly if they have to be fully funded by the local authority. In England, where similar powers already exist for local authorities, there has been virtually no introduction of relief. A recent report by the FSB in Wales, also found that where local authorities have power to grant relief (using discretionary rates relief), only half had granted any discretionary relief in the previous 3 years.⁶

Nevertheless, we hope that local authorities will consider how they can build on the foundation of the SBBS to support business start up and growth in communities.

For further information on any of the points raised in this submission, please contact Susan Love, Policy Manager e: susan.love@fsb.org.uk t: 0141 221 0775.

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

There is no doubt that the intention behind the Bill is indeed to empower communities. It does not demand that all communities become empowered but instead, in most cases, the Bill makes provision for communities to become empowered only if they wish to, and only to the extent that they wish to become empowered. So, for example, the Committee will already be aware that one of our major investment areas, Growing Community Assets (or GCA), has, since 2006, made over £60 million available to communities throughout the whole of Scotland - both urban and rural - so that they can have more control and influence over their future development, prosperity and resilience through owning and developing local assets that are important to them. Although we have seen our investment bring about some spectacular transformations in a number of communities, nevertheless, the Fund has always been clear that asset ownership is not appropriate in all circumstances or for all communities. The Bill recognises this too in that while it does give communities the right to request to **buy** public sector land or buildings, it also gives them the option to request to **lease**, **manage**, **occupy** or **use** such land and buildings. This provides communities with a variety of ways in which they can make better use of public land and buildings. It also gives them the option to ‘test their mettle’ by maybe starting off by leasing and managing an asset to see how they get on before deciding to buy it outright from the public authority.

It should be stressed, however, that our GCA investment area only supports communities to **acquire** and **own** assets (private as well as public). But while GCA will not fund communities that simply want to lease, manage, occupy or use public sector land and buildings, some of our other investment areas and programmes may support community groups to provide services and activities from public sector premises.

The variety of ways in which the Bill permits communities to get involved in improving public services is also welcomed because of the choice it affords them to get involved to the extent that they want to. However, because the Big Lottery Fund is unable to financially support statutory obligations, there is probably an interesting debate to be had here as to just what funding we will be able to provide to communities who decide to accept this challenge.

The success or otherwise of the Bill’s proposals on participation and asset transfer requests, as well as a number of its other proposals, will depend to a great extent on the attitude and position taken by the public bodies affected by them, and especially, of course, by local authorities. In addition, success will depend upon
the extent to which communities, and the statutory and voluntary organisations which support them, can access and develop the skills and resources they need to successfully exploit the opportunities the Bill creates.

Perhaps nowhere will this be more key than in the Bill's proposals around community planning. The Bill legislates for this activity to be the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the local authority area. By putting forward these provisions, the Government is signalling how it intends community planning to operate and that it expects communities to be at the core of the process. It is to be hoped that the public bodies involved pick up this signal and include community bodies as full partners.

Community bodies will require help and resources to enable them to play this fuller role and this point will be returned to in our response to Question 3 below.

Other provisions in the Bill that are particularly welcomed include:

(i) The attempt to provide greater clarity and transparency around common good assets held by local authorities by placing a requirement on Councils to establish and maintain registers of all properties held by them that fall into this category;

(ii) The new measures aimed at making the ‘right to buy’ provisions in the Land Reform (Scotland) Act 2003 easier to use, as well as the extension of these provisions to urban Scotland (though, as was pointed out above, GCA has been supporting communities throughout the whole of the country to acquire and develop all sorts of assets that matter to them (not just land and buildings) since 2006). This will also assist us, and our partners, Highlands and Islands Enterprise, in our delivery of the Scottish Government’s Scottish Land Fund; and

(iii) The introduction of a new Part 3A of the Land Reform (Scotland) Act 2003, permitting community bodies to acquire neglected and abandoned land, even where there is not a willing seller (though it is anticipated that agreeing definitions of ‘neglected’ and ‘abandoned’ will not be straightforward).

A surprising omission from the Bill perhaps was the provision of greater clarity on a substantive future role for Community Councils. The Bill does recognise these Councils’ interest in shaping local services and gives them a specific role in relation to the monitoring of common good assets. However, it had been anticipated that the Bill would provide an opportunity to increase Councils' profile and their contribution to civic and community life.

A final concern is one that it is understood was expressed previously by others, namely, that some people and communities might have difficulty understanding the language used in the Bill. It is appreciated that the Bill must follow the usual
format and conventions, but this makes it all the more important that it is accompanied by clear, concise and easily understood explanatory notes. The recent publication of an ‘easy read’ version of the Policy Memorandum for the Bill is welcomed. Highland and Islands Enterprise’s work in producing support materials for communities using the provisions of the Land Reform (Scotland) Act are a good example of how this challenge can be addressed. Based on experience gained in over ten years of working with communities to acquire, develop, manage and operate local assets and services, we believe the Bill’s publication presents a perfect opportunity to work with communities already doing this to co-produce support materials and other resources.

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

Asset transfers

Although public bodies will lose the capital value of any assets they transfer to community bodies (especially if, as the Big Lottery Fund prefers, they transfer the asset at a discount or even at nil cost), they will also be free of the associated liabilities. At the same time (and especially if we support them through our GCA investment area), the community will acquire an asset which may have fallen into disuse or has not been used to its full potential, but which the community themselves can now put to productive use to address local needs and benefit local residents.

In some instances, community asset projects and public sector organisations can be mutually beneficial. For example, instead of operating a separate local office, the public sector organisation could become a core tenant of the newly community-owned asset, thereby going a considerable way to help with the asset’s future sustainability too.

As mentioned above, since the introduction of GCA in 2006, the Fund’s policy has been to only fund acquisition costs when public sector assets are sold to community groups at a discount. This position is endorsed in the Report, ‘The Land of Scotland and the Common Good’ published by the Scottish Government’s Land Reform Review Group in May this year which states that:

“The Review Group considers that assets should be transferred to local communities at a reduced cost or no cost where that is judged in the public interest because of the wider public benefits it will deliver.”

What is more, the Review Group went on to state that it saw: “no logic to the circulation of public funds”, which we interpret as one public body (such as the Fund) having to provide grant assistance based on full market value to a community body to pay another public
body (such as a local authority) for land or an asset which it is selling to a community.

Work to clarify and ensure a more consistent interpretation of the Public Finance Manual in relation to asset transfer will be important to the success of this part of the Bill.

Neglected and abandoned land

The Bill’s provisions allowing community bodies to apply to acquire neglected and abandoned land from unwilling sellers will see communities bringing such land into productive use, thereby removing what could be a blight on the areas affected and, in some cases, relieving public bodies of the burden of dealing with the consequences of this neglect. This can only be good for the communities and the local authority areas concerned - environmentally, but also maybe socially and economically. Moreover, the community’s development of such land may even stimulate the local property market and encourage further sales by others.

There will, however, be challenges, particularly in cases of unwilling sellers in ensuring that a community body is able to gain sufficient information about an asset in order to make a reasonable decision about both its value and the aspirations the community harbours.

Allotments

The proposed new duty on local authorities to hold and maintain waiting lists for allotments will hopefully provide welcome clarity for all concerned (both the local authority and those wishing an allotment) about the availability of allotment sites in the local authority area. It will also provide a valuable source of intelligence about the demand for, and potential to develop, community growing sites. However, it will also put further pressure on local authorities to respond to increased demand for such sites.

Participation requests

While the outcome for everyone involved must be to provide a better service for those who need it, public bodies will inevitably have to spend scarce and precious time and other resources assessing any participation requests they receive from community bodies. This coincides with dire warnings from the Improvement Service for Scottish local government about sizeable cutbacks in expenditure that Councils and other public sector bodies are going to have to make.

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?

Our experience indicates that many communities - and especially community anchor organisations - are already undertaking the sorts of activities described in the Bill. Nevertheless, the capability of communities across Scotland to take advantage of the provisions in the Bill will, as would be expected, vary enormously, and will do so to different degrees at different times. Many able and capable communities will undoubtedly have the capacity to take full advantage of the Bill’s provisions - or at least to take advantage of them to the extent that they wish to. Other communities - whether capable or not - will have no interest in the Bill’s provisions, while there will be others still who would probably like to make use of the provisions but lack the capacity to do so. Indeed, some of these latter communities may not even know how to start to take advantage of the provisions. And, as suggested earlier, even something as basic as the language used in the Bill and its associated documentation will be off-putting to communities if they are unable to understand them.

That said, we know that with the correct mix of capacity, engagement and support, communities are more than capable of rising to significant challenges and seizing substantial opportunities successfully. For that to happen though, the eventual Act will need to be underpinned by a significant effort to ensure that it is well understood and used.

The preparation of applications and compilation of business plans, etc., are complicated and time-consuming tasks, especially for voluntary organisations. This should be recognised in the timescales given to such groups to put these documents together and to submit them.

A lot of community groups will probably need help and support to build their capacity so that they can put quality applications together. As well as this practical support (with things like business plans), the Big Lottery Fund has found that applicants often also need relatively small amounts of money to develop and test their ideas and thinking, for feasibility studies, technical reports and scheme design studies, community consultation, professional advice, or to visit similar operational projects elsewhere to see how they work and to learn from them. This latter activity is a particularly powerful and effective way for projects to learn from one another so as to build on positive experiences and avoid pitfalls. The Fund therefore offers grants of between £500 and £10,000 through its Investing in Ideas programme for these purposes.

Our years of experience of operating grant programmes which support communities to acquire and develop assets, as well as the independent evaluations of these programmes, have confirmed how much applicants need support to help them put together large scale and complicated capital projects. We have therefore made specific budgetary provision so that we can provide Investing in Ideas awards to potential GCA applicants. We have also put contractual support in place to help applicants and grantholders with self evaluation, financial and business support, and with renewable energy projects. Indeed, all applicants who make it through to
stage two of the GCA application process are automatically referred on to our business support contractors (who are themselves a social enterprise). In addition to all of this, applicants can also apply for up to £50,000 (and sometimes more) in development funding. This is intended to help meet the costs of, for example, options appraisals, feasibility studies, site investigations, design development, statutory consents, business plans, professional and legal fees, market research and capacity building, between stages one and two of the application process.

We also employ two members of staff who can help applicants and grantholders with advice and support on a wide range of building and technical matters. This form of support is particularly highly valued by applicants and grantholders.

The findings from the five year, independent evaluation of GCA, published last year, provide very useful indicators, identified by projects themselves, about the factors that contribute to successful community ownership projects, as well as the sorts of challenges (including some that are not inconsiderable) that they face. The capability and capacity of a community group can have a direct bearing on a lot of these factors and challenges. So, for example, GCA project managers recommend that group members need to be committed to their projects, willing to give generously of their time, effort and expertise, and to engage constantly with the members of their communities. Major challenges included an over-reliance on the same office-bearers, members and volunteers and, of course, achieving financial sustainability. Fortunately, GCA projects also suggested some practical measures that can be taken to help make community ownership a success and thereby contribute to the success factors.

The GCA evaluation also made another couple of interesting observations which have a bearing on the capability of community groups to make a success of their projects.

The first was how crucial local Councils can be when it comes to enabling communities to achieve their aspirations to own and manage public assets. This can range from the authority’s fundamental attitude to the community ownership of assets (i.e. whether they are prepared to even consider the disposal of their assets to community groups), through to the support – financial or otherwise - they are willing to provide to the new community owners after they acquire the former Council property. The GCA evaluation makes it clear that there are both benefits and challenges for both parties to such transactions.

The second observation arose from a survey of households in areas where GCA projects are located. This demonstrated more limited interest in volunteering and managing projects in urban areas. The evaluators suggested that the greater interest shown in rural areas, and particularly in remote rural areas, might be due to the stronger tradition of volunteering and of ‘doing things for themselves’ that exists there. In looking ahead, therefore, the evaluators suggested that urban communities, and especially the most disadvantaged of these, will continue to need greater support with community ownership projects if the potentially greater benefits (particularly in terms of their impact on larger numbers of people) are to be achieved.
A summary of the evaluation findings was e-mailed to all MSPs on 13 September 2013 but it can be viewed at:

http://www.biglotteryfund.org.uk/-/media/Files/Programme%2520Documents/Growing%2520Community%2520assets/GCA%2520eval.pdf?rct=j&frm=1&q=&esrc=s&sa=U&ei=rhfyU5G2Olyy7Aa6_UCg&ved=0CBQQFjAA&usg=AFQjCNF-Jxk31dmGnzLeFBNIVRzTMCzvYQ

The Big Lottery Fund has also accumulated a significant amount of learning about the capacity of some communities to respond to funding opportunities from developing and delivering the Our Place initiative.

Information about Our Place has been included in previous evidence supplied to the Committee (and to the consultations on the Bill), but members will recall that it is a place-based initiative by the Fund to invest in communities with high levels of deprivation but whose share of Big Lottery Fund investment has fallen furthest behind their share of need. Our Place is committed to focusing on a neighbourhood, offering long term support, pursuing opportunities and reaching out to communities to help us invest in their places. The theory behind the programme is that in doing so, the people and organisations in those neighbourhoods and communities will build stronger connections and relationships, and be empowered to work together to bring about positive changes in their communities.

Our learning from Our Place is drawn both from the positive outcomes it is achieving and from things that have not worked well or which did not complement the initiative’s overall approach. Further information about Our Place and some learning points are given in Annex A to this evidence paper.

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?**

While the Big Lottery Fund generally welcomes most of the specific provisions in the Bill, there are a small number which we think would benefit from further clarification or consideration. However, at this stage it is not possible to recommend that the provisions concerned need changed because in a lot of cases, they are subject to secondary legislation, regulations or Ministerial guidance. In other words, ‘the devil may yet be in the detail’. Three particular examples illustrate this point.

The first example relates to the proposed modification to the Community Right to Buy process whereby Scottish Ministers will arrange for the ballot required after
the right to buy has been triggered to be conducted by an independent third party, not the community making the right to buy as formerly. Ministers will also meet the cost of the ballot. Whilst the proposal that Scottish Ministers organise and pay for the ballot has much to commend it, the Fund’s evidence on the draft Bill previously pointed out that there was a danger that this might also, in a way, divorce the community body wishing to make the purchase from the community whose very support it needs to be assured of. Nevertheless, it will only be once the detail of this proposal is made plain that we will be able to gauge whether or not it will work to a community’s advantage.

The second example concerns Section 52(4)(e) of the Bill which requires the ‘community transfer body’ making an asset transfer request to specify in its request the price it is prepared to pay for the asset it wishes to acquire. In our evidence to the draft Bill, we pointed out that this will entail the community body having to arrange and pay for a survey/valuation at a very early stage. This seems unfair and onerous at this stage of the process. Instead, it would expedite the transfer process if the relevant authority gave prior notice to the community body of the minimum price it would accept. This could prevent the community body having to become embroiled in a costly and time consuming negotiation. However, this particular issue is another that may yet be resolved further down the line because the Bill allows Scottish Ministers to make regulations enabling community transfer bodies to request information from public authorities about the assets they are interested in.

It would be useful for the community body to have the valuation early as it could provide the basis for a negotiated settlement with the owner. It will also let the body know the amount of funding they will need and give them the opportunity to make early contact with potential funders to gauge the likelihood of funding being made available. More ‘realistic’ valuations would also be welcome: that is to say that while a valuer may insist that a property can command a certain valuation on the open market, the reality is that no party other than the local community may actually be interested in buying that property! This issue may take on added importance with the extension of the community right to buy to urban areas where, more generally, there is likely to be a more competitive market for relatively more expensive land and buildings.

The third example concerns a community’s right of appeal where its request for the transfer to it of an asset held by either Scottish Ministers or a local authority is refused. If such a request by a relevant public authority other than Scottish Ministers or a local authority, the Bill provides for the community body to appeal to Scottish Ministers. The Bill currently makes no mention of any right of appeal against a refusal by Scottish Ministers to agree to an asset transfer request. Local authorities on the other hand, being democratically accountable in their own right, are required by the Bill to make separate arrangements for the review of decisions to refuse asset transfer requests. Here again, however, the Bill empowers Scottish Ministers to make regulations about the form these arrangements must take.

The Fund supports the proposal in the Bill to require local authorities to provide
detailed waiting lists, annual reports and strategies in relation to allotments. However, in our responses to consultations on the Bill, we indicated that we would like to see Councils being required to produce registers of all their land assets - not just allotment sites - and to make them publicly available. We also suggested the minimum information that these registers should contain. We believe that the production and existence of asset registers would greatly assist both sides involved in community right to buy transactions involving public sector assets.

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?

Equal rights

The Fund welcomes the fact that in making decisions under the provisions of the Bill, public bodies will require to constantly be mindful of their duties under the Equality Act 2010. We would also support suggestions that public authorities be required to carry out an Equality Impact Assessment when developing policies in relation to the provisions in the Bill. This is because in addition to our fundamental, intrinsic belief in equality, and our commitment to our own equality principles, we also believe that the promotion of full accessibility, diversity, equality of opportunity and inclusion, and the reduction of disadvantage and exclusion can all have practical benefits for communities and community projects too. So, for example, in our experience, most community-based service provision aims to ‘rectify wrongs’, or fill a gap or deficit. And on a very practical level, the opening up of community asset projects to as many people and different groups as possible could increase usage, business, and thereby sustainability.

Impacts on island communities

We have seen contrasting responses to the opportunity to take on community ownership of land across the three island local authority areas reflecting the relative importance, differing patterns of use and availability of land in these areas. Moves to improve the operation of the community right to buy will be especially helpful in Eilean Siar (as well as in the island communities in Highland and Argyll and Bute Council areas). In our experience, Councils in these areas are generally well disposed to community engagement in assets ownership and service provision. Consequently, all three island Council areas have high levels of community ownership in terms of buildings and other assets, including renewable energy resources. This underlines the point made earlier in response to Question 3. about how crucial local authority support and encouragement can be in facilitating community ambitions. The Community Empowerment Bill may create
further opportunities in island communities, as well as important opportunities for these communities to share their considerable and valuable experience and expertise more widely.

Sustainable development

At a project level, and specifically for community asset ownership projects, our experience suggests that the provisions in the Bill relating to this activity are likely to have a positive impact on sustainable development.

The GCA1 evaluation tells us that the projects funded under the investment area have had a positive impact on the local, and thereby the global, environment. This is because environmental concerns have been an important part of most of the projects supported and their efforts have taken a variety of forms.

17 GCA1 community energy projects are now in operation and generating roughly 9.8MW of renewable energy. These projects have, in turn, inspired other communities to generate their own power and therefore income, while at the same time making a major contribution to reducing CO2.

Thanks to the shops, post offices and petrol stations saved or created by communities, there has been a positive impact on reducing fuel consumption. And there is evidence that involvement with GCA projects leads households to reduce their household energy consumption too.

Almost all the new build and refurbished projects use environmentally friendly heating systems and building materials. For example, the new centre built with GCA funding by the Gairloch and Loch Ewe Action Forum (GALE) was the first public passive building in Scotland, and The Big Shed project in Loch Tay won a Carbon Trust Scotland Low Carbon Building Award in 2013.

A number of recycling projects (such as RECAP’s Community Recycle North Lanarkshire and the Ballantrae Recycling Workshop and Retail Outlet) not only save users money but also divert waste from landfill.
BIG LOTTERY FUND EVIDENCE ON THE COMMUNITY EMPOWERMENT (SCOTLAND) BILL

OUR PLACE

What is Our Place and what do we want to achieve with this initiative?
Our Place represents a different way of investing Lottery funding based around priorities and a vision statement set by local people. It is a place-based initiative from the Big Lottery Fund that aims to build stronger connections and relationships in communities, empowering local people and organisations to bring about positive and lasting changes in their neighbourhoods.

Our Place 1 launched in five neighbourhoods in 2010 and has since invested approximately £11 million across 25 projects that positively contribute to their neighbourhood vision. In addition to grant funding, we invested in support contracts that built the capability of local people and organisations, supporting them to develop their own neighbourhood vision statement and providing them with the best possible opportunity to make effective applications to us that reflected both local priorities and the outcomes the Big Lottery Fund wanted to invest in.

A project team at the Fund has developed Our Place 2 and our learning from the first initiative has been built into our approach. The new Our Place delivery framework essentially splits the initiative into two phases. Phase 1 is focused on asset-based community development work, which will be ongoing throughout the life of the programme, and phase 2 is focused on project development, grant making and project delivery, which will start approximately 12 months into the process.

Our Place 2 will work in seven neighbourhoods across Scotland and will adopt an approach that is flexible, long-term and locally determined in a way that focuses on the assets within each neighbourhood. The initiative will also explicitly aim to have more impact on the way the public sector works with communities. All of these developments are reflected in the outcomes that Our Place 2 will be working towards, and projects funded through the initiative will be required to meet all three of these outcomes.

Our Place 2 Outcomes

- Communities have more influence on decisions taken locally
- Communities have more sustainable services and facilities that reflect their local priorities
- People say their community is a better place to live
The Big Lottery Fund is investing in five year support contracts to provide intensive, asset based community development to develop the skills and confidence of local people and organisations. There is a support contract for each Our Place 2 neighbourhood.

What will support contractors be doing in each neighbourhood?  
The focus of the support contractors’ work will be less about funding in the early stages and more about doing the right groundwork in neighbourhoods, building connections, strengthening relationships, facilitating asset mapping and visioning, and developing skills and confidence. We expect the early stages of Our Place 2 to take up to 12 months, depending on the local context.

Support contractors will then support neighbourhoods through the project development and grant making stage of Our Place 2 and we will expect them to be aware of every application that is submitted through the initiative. A Community Chest of £20,000 will be administered by the support contractors and available to each community to be accessed in small amounts as and when required. We anticipate that the Community Chest will be used to run events, pilot activities, undertake research and learning visits, or to deliver community capacity building in the first year or two of the initiative. The final stage of the support contracts will be focused on supporting grantholders through project set-up and the early stages of project delivery.

It is essential that the support contractors work closely with key agencies operating in these neighbourhoods throughout the lifetime of their contract - sharing information and learning, complementing existing initiatives, facilitating joint-working and avoiding duplication of efforts will be of critical importance.

What kind of projects will Our Place 2 fund?  
The Fund has set broad outcomes and eligibility criteria for this initiative, but we have not specified any particular types of projects that we would like to fund. All projects should stem from the community and fit with their vision for their future. Although we cannot know for sure which types of projects will emerge from each of the seven neighbourhoods, our learning from Our Place 1 tells us that they are likely to include a variety of revenue and capital. Funding through the first initiative has been invested in projects around community transport, community gardens, community food, financial inclusion, Development Trusts, community health, family support, community facilities, additional capacity building support to voluntary and community sector organisations and much more.

What have we learned from Our Place 1 and how has it influenced Our Place 2?  
Our Place 2 aims to get in alongside communities through support contractors, helping people and organisations to form ideas by supporting them over a long period of time and in a neutral way. The Our Place journey thus far offers a
number examples of how citizen-led activity has been enabled, increasing people’s confidence and empowering them to come together to deliver community-led projects. However, the journey also offers examples where community groups perhaps feel that they are taking on too much too soon, and other examples where groups are delivering successful projects but struggle with sustainability and therefore remain dependent on Our Place funding.

The following key learning points appear to be particularly important for any discussions around community-led approaches to empowering communities:

- Genuine community empowerment, and asset based community development in particular, takes a long time and is very resource intensive. The Fund did not fully appreciate how long until Our Place 1 delivery was underway. We extended Our Place 1 support contracts from two to three years. As we embark on taking the Our Place approach to seven new neighbourhoods, we have committed to five year support contracts from the outset.

- Genuine community-led approaches require a depth and breadth of consultation that goes beyond most of our expectations for our other funding programmes. The community must be in control of the consultation and every effort must be made to bring people from the margins into the centre of the process as citizens and not as a member of a specific policy group.

- Small amounts of money can make a huge difference to encourage citizen-led activity. Our Place 2 will include a community chest that can distribute small amounts of cash (approximately £250) to enable things to happen quickly and build momentum at a pace that is right for a community.

- Good things can happen when citizens are in a position to sit at the table and influence decisions that affect their community. Our Place 1 offers a good example in Newmains where Newmains Development Trust are leading a significant £2 million capital project to build a new community hub, and the local authority have agreed to base the local library and housing services within the new building. The discussions between people and organisations have not only led to an important revenue stream for the Trust, they have also built people’s confidence in their ability to shape the future of their community.