LOCAL GOVERNMENT AND REGENERATION COMMITTEE

AGENDA

28th Meeting, 2014 (Session 4)

Wednesday 12 November 2014

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Community Empowerment (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Derek Mackay, Minister for Local Government and Planning, Alasdair McKinlay, Head of Community Planning and Community Empowerment Unit, Jean Waddie, Bill Manager, and Dr Amanda Fox, Food and Drink Policy Leader, Scottish Government.

2. **Community Empowerment (Scotland) Bill (in private):** The Committee will consider the evidence received at today’s meeting.

David Cullum
Clerk to the Local Government and Regeneration Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5223
Email: david.cullum@scottish.parliament.uk
The papers for this meeting are as follows—

**Agenda Item 1**

- PRIVATE PAPER LGR/S4/14/28/1 (P)
- Letter from the Minister for Local Government and Planning LGR/S4/14/28/2
- Scottish Enterprise Letter LGR/S4/14/28/3
- Note from the Clerk LGR/S4/14/28/4
- Finance Committee Report LGR/S4/14/28/5
- Note from the Clerk LGR/S4/14/28/6
- Delegated Powers and Law Reform Committee Report LGR/S4/14/28/7
- Note from the Clerk LGR/S4/14/28/8
- Note from the Clerk LGR/S4/14/28/9
- SPICe Briefing Paper LGR/S4/14/28/10
- SPICe Summary Paper LGR/S4/14/28/11
- PRIVATE PAPER LGR/S4/14/28/12 (P)
COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I look forward to giving evidence to the Committee on the Bill on 12 November. I thought it might be helpful if I outline before our meeting some areas in which the Scottish Government plans to bring forward amendments at Stage 2. I hope this will assist the Committee in its scrutiny.

In accordance with the commitment made by the Cabinet Secretary for Culture and External Affairs, we propose that Historic Environment Scotland should be added to the list of community planning partners set out in Schedule 1.

We will bring forward amendments to include Community Benefit Companies (BenComs) as a type of body which can make an asset transfer request for ownership of land, under section 53. BenComs are now defined under the Co-operative and Community Benefit Societies Act 2014.

We will put in place an appeal process for asset transfer requests made to the Scottish Ministers, in line with the provisions already included for requests made to local authorities or other relevant authorities.

I believe there is benefit in requiring relevant authorities to publish their registers of assets, to help community bodies understand what land or buildings may be available for asset transfer. My officials are considering how such a requirement might be constructed.
As noted in the letter from the Minister for Parliamentary Business to you and the Convener of the Rural Affairs, Climate Change and Environment (RACCE) Committee, we propose to use the Community Empowerment Bill to make changes to Part 3 of the Land Reform (Scotland) Act 2003, on crofting community right to buy. A “Call for Evidence” to consult stakeholders on the proposed changes was issued on 13 October and is available on the Scottish Government website at http://www.scotland.gov.uk/Topics/farmingrural/Rural/rural-land/right-to-buy/crofting.

We will also be seeking to make further amendments to Parts 2 and 3A of the Land Reform (Scotland) Act 2003, although the detail of these is still under discussion.

I and my Ministerial colleagues will also, of course, pay close attention to the views of your Committee, the RACCE Committee and the Delegated Powers and Law Reform Committee when you report on the Bill, and consider what further amendments might be brought forward to improve the Bill.

I am copying this letter to the Convener of the RACCE Committee for their interest in Part 4 of the Bill.

DEREK MACKAY
**Supplementary Information from Scottish Enterprise following Committee’s meeting on 1 October 2014.**

**How much money has Scottish Enterprise put into individual partnerships?**

Scottish Enterprise (SE) role in Community Planning Partnerships (CPPs) is not primarily as a delivery agent. The most succinct expression of the Enterprise Agencies role in CPPs was set out in a letter on governance and accountability for Single Outcome Agreements in February 2009, by Dr Andrew Goudie (then Chief Economic Adviser, Scottish Government, and Chair of the Concordat Oversight Group):

“In relation to the Enterprise Agencies, whilst they remain statutory Community Planning partners their remit has changed. They no longer have responsibility for a number of functions that are of importance to local economic development (i.e. Skills, Business Gateway, and in the case of Scottish Enterprise local regeneration). These are now the responsibility of Local Government or Skills Development Scotland. While the work of Scottish Enterprise in particular is now more firmly focused on the achievement of national outcomes, the Enterprise Agencies continue to have an important and beneficial role to play within SOAs. This role includes:

1. Working with local partners to establish economic challenges and opportunities;
2. Contribute to articulating realistic and stretching economic outcomes;
3. Where national and local outcomes are complementary, contribute to the delivery of local outcomes.”

More recently, SE has reinforced this, in its response to the Agreement on Joint Working on Community Planning in September 2013. In particular:

- Our focus will be on bringing support, capacity, connections and expertise to the partnership, demonstrating how we deliver against our growth priorities.
  - Working with partners to better understand the assets and opportunities that will help maximise their contribution to Scottish economic growth.
  - Sharing research and evaluation evidence.
  - Making more explicit the contribution that SE makes to CPP areas through clearly articulating the range of services, projects and opportunities delivered in the area.

- As an opportunity-driven organisation, with nationally set milestones, measures and targets; SE needs to remain flexible in how it deploys its resources across the country. Consequently, SE doesn’t set locally based targets. We are, however, keen to work with local partners to develop shared actions to enhance a CPP’s contribution towards the national measures e.g. building the local growth pipeline.

Where SE has worked with local partners to agree shared actions around SOA indicators, e.g. the Team North Ayrshire example in the SE written submission, it is most often about coordinating and aligning existing services rather than creating something new. As such the cost is generally staff time rather than funding.

In supporting our engagement with all 27 CPPs in the SE area, we have 13 full time staff responsible for our partnership working. Also, for each CPP, we have a designated person at senior level, a location director, who represents SE on the CPP Board and is the first point of contact for the Local Authority.
What proportion of your budget are you knowingly putting aside for high risks in support of community needs?

As an opportunity-led, demand-driven organisation, SE does not have a set profile of its Budget in this way. Each project is determined on its own merits, based on the impact it will have on Scottish economic growth. Our budget lines, as set out in our Business Plan, represent where we best feel the economic opportunity lies, although we react flexibly during the year to reallocate funds accordingly.
Local Government and Regeneration Committee

Community Empowerment and Regeneration Bill

Note by Clerk on Finance Committee Report on Bill

Introduction

1. This note invites the Committee to consider the report by the Finance Committee on the Bill and highlights parts which need to be addressed with the Minister.

Background

2. All Bills on introduction require to be accompanied by a Financial Memorandum. Under Standing Orders (9.3.2) it requires to “set out the best estimates of the administration, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.” Costs require to be differentiated between the Scottish Administration, local authorities and other bodies, individuals and businesses.

3. The Bill complied with Standing Orders on introduction in this regard and the Finance Committee commenced scrutiny of the content of the Financial Memorandum. Following their scrutiny they wrote to LG&R, as the lead committee, with their findings. It falls to the lead committee to consider their report when preparing a stage 1 report to Parliament.

4. The Finance Committee report came to a number of conclusions, set out in bold in their report, before inviting LG&R to consider their report. The full report is circulated separately for members and Annexe 1 contains a list of those paragraphs printed in bold as conclusions.

Issue

5. While members will wish to consider the report in its entirety paragraphs 68-84 refer to Part 4 upon which the RACCE committee are leading. Members may, in the first instance, wish to concentrate on the remainder of the report.

6. The Finance Committee invited LG&R to seek responses, clarification, elaboration and detail from the Minister on various aspects of the Memorandum and costs arising therefrom. Those can be sought during the Minister’s evidence session with the Committee on 12 November.
7. Paragraphs 38 and 54 of the Finance report are potentially troublesome in terms of the stage 1 report given in each case they suggest some difficulties in reaching the levels required by Standing Orders. For convenience the paragraphs are repeated here:

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

8. As indicated Standing Orders require best estimates to be provided along with timescales and margins of uncertainty. The suggestion, particularly in paragraph 38, that these are not provided is significant, particularly should this be agreed by the Committee.

Options available to the Committee

9. If the Committee, having taken account of the Finance Committee report and any subsequent evidence received, are dissatisfied with the Financial Memorandum there are various options that could be pursued.

10. The Committee could request further evidence from the Minister either before or after finalising the stage 1 report. Members may note the Finance Committee have already pursued this approach and despite further information being received remain dissatisfied.¹ Members will wish to consider the terms of that response closely² and come to their own views on whether further information could be provided and if so what would assist.

11. Should the Committee ultimately share the Finance Committee concerns this would be a factor in reaching the conclusion on whether the general principles of the Bill are to be agreed in the report to Parliament. The Committee could for instance consider the Financial Memorandum does not adequately cost the provisions in the Bill.

12. The Committee might wish to seek assurances from the Minister that the concerns of the Public Bodies set out in the Financial Memorandum will be assuaged by an undertaking to meet the costs that ultimately arise.

¹ See letter from Minister to Finance Committee dated 24 October attached to their report.
² Members will for instance wish to consider whether any distinction can be drawn between the second and penultimate paragraphs in the Ministers letter.
Action

18. Members are invited to:
   i. note the concerns raised and to take the opportunity on 12 November to pursue matters with the Minister in oral evidence as suggested by the Finance Committee report.
   ii. note the options available in the event they are ultimately dissatisfied with the Financial Memorandum.

David Cullum
Clerk
3 November 2014.
General

27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.

28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any additional costs can be managed within current resources, given that costs are expected to be demand driven.

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.

Part 3

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

65. The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.

Part 4

72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.

78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what
parallels can be drawn between it and funding for CRTB in the context of the Bill.

80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichel Down Rules”.

84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.

Part 5

103. The Committee invites the lead committee to ask the Minister to respond to COSLA’s request for further clarity in this area.

Part 7

119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.

Overall

128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.
INTRODUCTION

1. The Community Empowerment (Scotland) Bill (“the Bill”) was introduced on 11 June 2014 by the Scottish Government (“the Government”). As with all bills, it was accompanied by a Financial Memorandum (FM) (page 51 of the Explanatory Notes) which set out the estimated financial implications of the Bill’s provisions.

2. Under Standing Orders Rule 9.6, the lead committee at Stage 1 is required, among other things, to consider and report on the Bill’s FM. In doing so, it is required to consider any views submitted to it by the Finance Committee (“the Committee”).

THE BILL

3. The FM states 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.”

4. The FM states that it sets out the costs associated with the following parts of the Bill—

- **Part 1** places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government’s internationally acclaimed “Scotland Performs” framework.
- **Part 2** places community planning partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.
- **Part 3** provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.
- **Part 4** amends Part 2 of the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, and introduces a new Part 3A to that Act to make provision for community bodies to purchase neglected and abandoned land where the owner is not willing to sell that land.
- **Part 5** provides community bodies a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or the Scottish Ministers.
- **Part 6** places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good and requires local
authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

- **Part 7** updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plotholders.

- **Part 8** provides for a new power which will allow councils to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

5. A table summarising the additional costs expected to arise as a result of the Bill’s provisions is provided on pages 52 to 60 of the FM.

**EVIDENCE**

6. The Committee received 16 responses to its call for evidence on the FM, around half of which were from local authorities. Responses were also received from organisations including COSLA, Highlands and Islands Enterprise (HIE), NHS Lothian, The Office of the Scottish Charities Regulator (OSCR), the Scottish Environmental Protection Agency (SEPA), the Scottish Property Federation (SPF) and SportScotland. All written evidence is available on the Committee’s website.

7. The Committee also received a letter dated 3 October 2014 from the Minister for Local Government and Planning (“the Minister”) which provided further financial information with regard to forecasting the use of participation requests and asset transfer requests.

8. The letter highlighted the difficulties the Government and stakeholders had faced in estimating the financial impacts of the Bill, but provided “examples based on current practice to show the level of resource and costs that may be involved in both participation requests and asset transfer requests.”

9. At its meeting on 8 October the Committee took oral evidence on the FM from the Scottish Government Bill Team. The Official Report of the evidence session can be found on the Parliament’s website via the following link: http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=9573&mode=pdf

**Issues highlighted in evidence**

10. A number of written comments were received in respect of specific aspects of the Bill and their estimated financial impacts as set out in the FM. The Committee then raised a number of these points in its oral evidence session with the Bill Team.

11. However, several respondents also commented on the possible financial implications of the Bill as a whole and expressed concerns regarding its overall

---

1 Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
impact on their budgets. Given that some of the Bill’s costs are expected to be demand driven, the Committee notes that the FM does not fully quantify the total estimated financial implications of the Bill.

General Comments

12. A number of general comments about the FM were received with several respondents acknowledging the difficulty in predicting demand. HIE for example, stated that—

“The FM makes a good ‘estimate’ of ‘unit costs’ for aspects of the Bill’s delivery, in many cases providing ranges where those are informative, however, the inability to profile demand take up makes it impractical for the FM to estimate the total costs that might be expected in say the first three years of operation.” 2

13. Several local authorities, however, foresaw difficulties in meeting the costs of the Bill and called for additional resources from central government. East Lothian Council for example, stated that—

“Local government will incur extra cost as a result of these provisions (which constitute a new legislative burden) and it is not possible to allocate money to these costs from within our budgets without taking it from other activities. We would expect central Government to add to our settlement any money necessary to fulfil the provisions of the Bill.” 3

14. Glasgow City Council echoed this view stating that likely additional costs on local authorities were not quantified to any reliable extent in the FM due to difficulties in predicting demand and activity. However, it stated “that the costs will be significant and that local authorities will find it challenging to meet these costs from existing resources.” 4

15. Inverclyde Council also stated that there was “no evidence” to support the FM’s assertion that costs, in many cases, would be minimal and able to be contained within existing budgets. In its view, this was “not the case” and there was no additional fund within the Council to absorb any demand. 5

16. Similar suggestions that additional resources would be required to implement the Bill’s provisions were made by other respondents including North Lanarkshire Council and North Ayrshire Council which stated that—

“Where costs have been included in the narrative the ranges are sufficiently wide to accommodate a huge amount of uncertainty. However in other

---

2 Highland and Islands Enterprise, written submission
3 East Lothian Council, written submission
4 Glasgow City Council, written submission
5 Inverclyde Council, written submission
sections there is no mention of costs but it does mention there will be additional costs incurred. The implication is that the additional costs will be minimal but there is uncertainty that is not addressed in the bill.  

17. However, North Ayrshire Council also stated that “in the main the council was in agreement with the financial implications contained in the Bill.”

18. COSLA also acknowledged the difficulties in quantifying demand—

“it is difficult to anticipate the uptake and demand that will be placed upon Local Authorities. This makes it very difficult to quantify the financial cost that will be placed upon local government in complying with the legislation and indeed the Financial Memorandum makes no attempt to quantify a cost for these areas of the proposed legislation…

COSLA seeks reassurance that further work be undertaken to better quantify these costs before the Community Empowerment (Scotland) Bill is passed.”

19. When asked about the work it had undertaken to attempt to anticipate demand and to ensure local authorities are adequately resourced to effectively deliver the Bill’s measures, the Bill Team explained that work had been undertaken prior to publication of the Bill. However, it stated that “little financial information and cost information was provided by others” in response to its consultations and it had “found it difficult to amass information on how the legislation might be used” meaning that “it was difficult to consider what demand might be.”

20. The Bill Team explained that, as communities are not homogenous and will have different priorities and needs which could not be amalgamated into a single demand profile, it “will be hard to predict what communities will do.” It further pointed out that “no one else has been able to do it either.”

21. In response to concerns expressed by the Committee that the Bill might raise expectations where there was insufficient support available to meet them, the Bill Team explained that, the Government had a general convention that it would provide additional funding where new costs had arisen from legislation. However—

“The difficulty with the bill is that we cannot quantify that funding at the moment. That additional funding would need to be demonstrated and quantified through practice. That would happen through the normal processes and the funding would be provided in that way.”

---

6 North Ayrshire Council, written submission
7 COSLA, written submission
8 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48
9 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 48
10 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49
22. When questioned about how the funding mechanism would work, given the impossibility of estimating figures, the Bill Team replied—

"We cannot say at this time. If local authorities can demonstrate and quantify what the new duties in the bill have cost them, that will be part of the ongoing process of local authority settlements."\(^\text{11}\)

23. Given that the Bill was expected to take effect during financial year 2015-16 and the draft budget for that year was expected to be published imminently, the Committee asked how much would be set aside to cover the costs of the Bill’s provisions. In response the Bill Team stated—

"We are not anticipating any particular financial burden in 2015-16. COSLA is right to say that it will not be overly onerous and therefore could be encapsulated within current resources. However, we recognise that additional funding might be required in the future."\(^\text{12}\)

24. When it was pointed out that COSLA’s position appeared to be that whilst the costs of the Bill’s individual elements might not be overly onerous, overall costs had the potential to be so, the Bill Team acknowledged this point but stated that it did not agree that overall costs had the potential to be significant. It confirmed that it believed that—

"the cost can be managed within current resources, with some addition if the demand is more than local authorities can cope with."\(^\text{13}\)

25. In the event that costs did turn out to be greater than expected as a direct consequence of the Bill, The Bill Team confirmed that—

"That would be part of the normal discussions with local authorities through the annual budgeting process. Local authorities would have to demonstrate and quantify what was involved and then go into discussions with the Scottish Government"\(^\text{14}\)

26. However, the Bill Team further stated that it would be for the Minister for Local Government and Planning to respond more fully to this question.

27. The Committee invites the lead committee to seek clarity from the Minister regarding whether and by what mechanism additional funding will be made available for local authorities should they incur significant additional costs as a result of the Bill.

28. With particular regard to Parts 3 and 5 of the Bill, the lead committee may wish to explore the issue of how the Government can be confident that any

---

\(^\text{11}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54
\(^\text{12}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
\(^\text{13}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
\(^\text{14}\) Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 55
additional costs can be managed within current resources, given that costs are expected to be demand driven.

29. In response to questions from the Committee about whether there was a risk that, had the FM presented more concrete estimates of potential demand and costs, these might have been seen as “an upper limit for how much could be done”, the Bill Team agreed—

“Absolutely: demand will be led by communities, so we cannot work in that way. If we set a limit, that will confine the process and box it in.”

30. Expanding on this point, the Bill Team explained that it did not wish to set a benchmark as “we want the legislation to be successful and we want as many communities as possible to use it—it is for the communities to use and not for us to tell them to use it.”

31. Towards the end of the evidence session, the Committee drew attention to Standing Orders rule 9.3.2 which states that—

“A Bill shall on introduction be accompanied by a Financial Memorandum which shall set out the best estimates of the administrative, compliance and other costs to which the provisions of the Bill would give rise, best estimates of the timescales over which such costs would be expected to arise, and an indication of the margins of uncertainty in such estimates.”

32. When asked whether the FM met these criteria, The Bill Team explained—

“We attempted to include costs in the financial memorandum in a number of places where we believed that we could actually indicate what the costs will be. In some areas, we know that the costs under the current provisions are fairly low, for example, and we therefore have an idea of what the costs may be in the future.

We express a caveat a number of times about the margins of uncertainty, because to attempt to state what the bill might cost in future would be unreasonable and potentially misleading.”

33. Following the oral evidence session the Convener wrote to the Minister seeking an explanation of how the FM met the requirements of Standing Orders and

---

15 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
16 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 52
17 Standing Orders of the Scottish Parliament
18 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 58
19 Letter from Convener to Minister for Local Government and Planning dated 14 October 2014
also of the Scottish Government’s own guidance on Financial Memoranda (SG 2009/1).20

34. The Committee received a letter from the Minister dated 24 October21 which confirmed his view that the FM did meet the requirements of Standing Orders and had been conducted in line with the Government’s guidance.

35. The letter highlighted the work that had been undertaken with stakeholders in order to estimate unit costs and noted that the FM had provided examples of costs arising from similar processes—

“Thus the FM and the additional information supplied contains the full range of financial information that can be made available with certainty in relation to this Bill.”

36. However, the letter also stated that “the FM cannot estimate the level of demand for asset transfer or participation requests, and consequently does not provide ranges for the total potential costs of these provisions.” This, the Minister explained, was intended to avoid giving a flawed figure as the variables inherent to the Bill in terms of “the number of requests, their complexity and their distribution over time” “would make a specific figure or range far too questionable.”

37. Therefore, the letter concluded—

“the information provided is clearly the best estimate that can be provided of the administrative, compliance and other costs to which the provisions of the Bill would give rise, the best estimate of the timescales over which such costs would arise and has given a very clear indication of the margins of uncertainty in such estimates.”

38. The Committee acknowledges the difficulties faced in quantifying potential future costs arising from services that will be demand driven. However, the Committee remains concerned that, despite the requirements of Standing Orders, best estimates have not been fully provided.

39. The Committee invites the lead committee to ask the Minister what plans are in place to ensure that any costs arising from the Bill will be monitored on an ongoing basis. It also invites the lead committee to seek clarity regarding the funding mechanism by which resources will be made available to local authorities in the event that such costs prove to be significant.

21 Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
Part 2: Community Planning

40. The FM states that the Bill seeks to strengthen CPPs by placing new duties on public sector partners “to play a full and active role in community planning and the resourcing and delivery of local priority outcomes.” It explains that some of these bodies are already statutory community planning partners, whilst others are not, although in practice they “frequently participate in community planning.”

41. The FM states that “for those public bodies which are complying with national and local action already underway at policy level to strengthen community planning it is anticipated that the provisions will impose either no or minor costs” (such as costs relating to travel or staff time).

42. Similarly, the FM states that “for those local authorities which are complying with national and local action already underway at policy level to strengthen community planning, it is anticipated that the provisions will impose either no or minor additional indirect costs, in terms of commitment by senior officers and elected members.”

43. COSLA’s written submission agreed that any additional costs arising from this part of the Bill “would appear to be minimal.”

44. SEPA expressed surprise that it had been designated as a public body for community planning and expressed concerns about “false expectations that SEPA will fully engage with all CPPs in Scotland” stating that this would be “highly resource intensive and not cost neutral”, especially if it did not “have the flexibility to tailor our engagement with different CPPs, and to deploy our limited resource where we can add the most value.”

45. The Bill Team confirmed that SEPA would be a partner to the 32 CPPs across Scotland, but pointed out that the Bill did not stipulate what the level of engagement with each CPP should be. Therefore, “how SEPA engages will be flexible and will be decided in collaboration with CPP partners, so we do not necessarily see the same resource issues as SEPA does.”

Part 3: Participation Requests

46. The FM states that the Bill will enable community bodies to seek to participate, along with a public body, in a process to improve the outcome of a service delivered by that public body. Public bodies will only be able to decline a request for dialogue where there are “reasonable grounds” to do so and will be required to publish a report at the end of the process.

---

22 COSLA, written submission
23 Scottish Environmental Protection Agency, written submission
24 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 50
47. The FM acknowledges that public bodies (including local authorities) are likely to incur costs in responding to participation requests. However, it provides no estimates of what these potential costs might be, stating that “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.”

48. Expanding on this point in oral evidence, the Bill Team gave the example of one local authority area where demand for participation requests might be very low as the public authorities were already excelling in public engagement and participation as opposed to another area which might have low demand as a result of lack of capacity in the community. This scenario, it suggested, highlighted the difficulties in attempting to estimate the demand profile across Scotland.

49. The Bill Team also suggested that demand might increase over time as communities became increasingly aware of their new rights—

“When people see such requests being used, they might catch on. If people see them having an impact in their local area, demand may increase from that. It all depends on what communities want to do and how they want to use the provisions.”

50. In response to questioning as to why other FMs previously scrutinised by the Committee where costs were also expected to be demand driven had set out approximate upper and lower limits, albeit with appropriate caveats, yet this one did not, the Bill Team explained that any such ranges would “be too large to be considered worthwhile.” Levels of demand, it stated, would only be seen when the Bill took effect.

51. Expanding on this, the Bill Team continued—

“There are too many variables to factor into what would be a reasonable demand profile, or a reasonable idea of how many requests could come forward. We have gone back to what the unit cost might be and, as COSLA says, it is not overly onerous.”

52. When asked to give an example of a piece of previous legislation for which the costs had been similarly unquantifiable the Bill Team confirmed that it had looked but had been unable to find a similar example.

53. The letter from the Minister dated 24 October explained that “there is no existing community-led mechanism comparable to participation requests on which to

---

26 Scottish Parliament Finance Committee, *Official Report, 8 October 2014, Col 53*
base estimates of demand” and highlighted the uncertainties over uptake of participation requests and the work required to respond to them.  

54. The Committee acknowledges the difficulty in providing concrete estimates of services that will be demand driven but emphasises that Standing Orders require FMs to provide best estimates of costs, their timescales and margins of uncertainty.

55. The FM also states that public bodies (including local authorities) will incur costs in relation to the provision of an outcome improvement process, although again, no estimates are provided. Two examples of the costs incurred by a local authority in relation to community engagement events (ranging from £1,100 to £41,000) are provided with the FM stating that they mainly related to staffing costs.

56. HIE agreed that there were “inevitable uncertainties” associated with the extent to which communities would seek to utilise the opportunities presented by the Bill, but anticipated that communities in its area would wish to engage strongly and utilise the new powers conferred by it. However, with regard to participation requests it expected that it would be able to absorb them “to a large extent within the costs of staff time currently devoted to on-going business improvement activities.”

57. COSLA’s submission drew parallels between the potential impact of participation requests and that of the existing Freedom of Information laws and expressed concerns about the associated administrative burden. However, the Bill Team stated that the Bill was not directly comparable to the Freedom of Information Act 2000 as it applied to everyone whilst participation requests would only apply to community bodies which met the criteria set out by the Bill. Furthermore, any such requests would then be assessed against certain criteria meaning that demand would be more limited.

Capacity Building

58. A number of respondents raised the topic of “capacity building” in community bodies with NHS Lothian, for example, suggesting that the FM’s costs were “arguably understated” and noting that its original consultation response had stated that—

“community bodies may not possess the relevant skills, experience or knowledge to allow them to be meaningfully or effectively involved. Public service authorities would therefore need to consider how they could provide support for capacity building. This could add pressure to public service authorities from an already under-resourced position….. There does not seem to be consideration in the bill that addresses the inevitable financial
and capacity implications of participation for community bodies in the improvement process.  

59. NHS Lothian also drew attention to the impact of the Bill in terms of tackling inequalities in Scotland, stating that—

“there needs to be specific regard made to what support infrastructures are in place to empower our less equipped communities, if not, the bill will further increase the inequalities gap between communities, some of whom are well equipped and able to articulate their needs while some will struggle to be heard/access this empowerment opportunity.

Without appropriate support and investment in community empowerment the key components of the Bill will not be fairly accessible to communities (both geographic or communities of interest).”

60. East Lothian Council stated that, in order to assist community groups to develop the capacity to take on the opportunities and challenges represented by the Bill, appropriate consideration should be given to the provision of adequate resources nationally “rather than assuming that local authorities will be able to find the resources from current spending allocations.”

61. This view was echoed by South Lanarkshire Council, which suggested that additional resource was required to establish appropriate structures and to support CPPs in maximising the Bill’s impact.

62. However, the Bill Team stated in oral evidence, that whilst it agreed that “communities are not necessarily on a level playing field”, it did not believe that this was a matter for the Bill. Whilst the Bill provided a legal framework for such requests, support for capacity building in community bodies was provided through different avenues such as the Strengthening Communities Fund announced in April.

63. South Lanarkshire Council also sought clarification of the definition of a community body, questioning whether such bodies were “restricted locally” or whether national organisations were also covered by the provisions. In the event that the latter was the case, it suggested it could be left open to “vast quantities of requests” leading to substantial costs which it was not resourced to deal with. It also expressed concerns that it could face further substantial costs if the outcome of the improvement process was that it had to “markedly change the way in which it sets its priorities and delivers services.”

30 NHS Lothian, written submission
31 NHS Lothian, written submission
32 East Lothian Council, written submission
33 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 49
34 South Lanarkshire Council, written submission
64. **The Explanatory Notes** state that—

“There are no restrictions on how a community may be defined for this purpose: it may be based, for example, on geographical boundaries, common interests, or shared characteristics of its members (such as ethnic background, disability, religion, etc.).

65. **The lead committee may wish to invite the Minister to respond to the concerns raised by South Lanarkshire Council regarding the definition of a community body.**

66. Fife Council also suggested that consideration might need to be given to levels of staffing needed to take on the organisation, assessment, and administration of additional requests from community groups. Whilst acknowledging that any investment in additional staffing might not be significant in terms of its overall budget, it noted that specific services such as Community Learning and Development were already under pressure as a result of having to respond to requests from local groups.\(^\text{35}\)

67. The letter from the Minister dated 3 October provided examples showing that the overall costs for participation and engagement events could vary depending on the issues being looked at. It suggested that this was also likely to be the case with regard to participation requests and on this basis, estimated that costs per request could range between £1,000 and £7,500 “in most cases”. Therefore, should there be 100 participation requests across Scotland, the total cost could be expected to be between £100,000 and £750,000.\(^\text{36}\)

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

68. The FM states that the Bill makes changes to community right to buy (CRTB) in order “to make the process easier and more flexible for communities while continuing to strike a fair balance between the rights of communities and landowners.” The FM further states that the Bill extends the right to buy to all of Scotland and removes the power of Ministers to designate “excluded land”.

69. Whilst the FM acknowledges that these changes could be expected to lead to more communities taking up the right to buy, it states that “it is not possible at this stage to accurately estimate the demand and how many new applications may be received.”

70. HIE agreed that it was difficult to quantify the likely increase in demand, but suggested that the extension of the right was “likely to generate significantly more CRTB applications” than anticipated with the attendant increase in costs to the Government. Whilst the FM does not make concrete predictions of the likely increase in CRTB applications, it provides examples on the basis of increases of five and ten

---

\(^\text{35}\) [Fife Council, written submission]

\(^\text{36}\) [Letter to Convener from Minister for Local Government and Planning dated 3 October 2014]
additional applications per year which HIE suggests is “on the conservative side”, particularly given the extension of the provisions to urban communities. This point was echoed by the SPF which questioned whether this assumption could “remain credible.”

71. The Bill Team agreed that HIE could expect more work as a result of the Bill, but stated that it would have “a certain amount of flexibility” in how it assisted communities. When communities come to HIE, it suggested that —

“the process will not be about engagement and consultation through HIE’s mechanisms; it will be about what the communities want to do.”

72. The Committee acknowledges that bodies such as HIE will have some flexibility in how they deal with increased volumes of CRTB applications. However, the lead committee may wish to seek further clarity over what support might be put in place for such bodies in the event that demand exceeds expectations.

73. Glasgow City Council stated that the FM “wrongly suggests that there are no financial implications for local authorities in relation to right to buy.” It expected costs to arise as a result of the council “putting a process in place and of utilising resource from a range of services in order to enable a response to be made within a very short timescale” where the request relates to its land or that of an Arms Length External Organisation. It also raised the issue of possible financial implications “in the circumstance where the proposed acquisition may deal with a short term issue but is not aligned to the Council’s longer term strategy.”

74. The SPF also suggested that the Bill might result in costs relating to events that did not happen or were delayed as a result of CRTB, for example where funding or investment was available for a limited time only and financial losses might be incurred as a result of delays resulting from CRTB applications.

75. Expanding on this point the SPF stated that its main concern was—

“that the enhanced scope of CRTB and by extension asset transfer may inhibit larger scale and complicated investment in development land in a manner that has not hitherto been an issue under the existing CRTB rights.”

76. However, the Bill Team rejected this suggestion, explaining that similar concerns had been expressed during the passage of the Land Reform (Scotland) Bill, but they had not come to fruition. It further explained that in the event that community applications were made with the intention of inhibiting large-scale

---

37 Highland and Islands Enterprise, written submission
38 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 51
39 Glasgow City Council, written submission
40 Scottish Property Federation, written submission
projects, it was unlikely that they would meet the public interest case set out in the Bill.

77. When asked whether it was correct that “the community land fund was established with a finger in the air to make a judgment, because nobody knew how many communities would apply or register interest in land” the Bill Team confirmed that it understood that to have been the case, although it did not know how the figure was arrived at.41

78. The Committee invites the lead committee to seek clarification of how the community land fund’s budget was arrived at and to consider what parallels can be drawn between it and funding for CRTB in the context of the Bill.

79. A further point raised by the SPF was the lack of a clear explanation of how the expansion of CRTB inter-relates with the Government’s guidance on what is known as “the Crichel Down rules” and the potential for costs in the event of a challenge under them. It explained that—

“This is where land has been compulsorily purchased by a public authority but is then surplus and subject to disposal by the public authority in question. In these circumstances it is government policy for the previous owner to have right of first refusal. We do not see any assessment of the costs of ensuring this guidance is followed or indeed, provision made for where challenges might be made by former owners to the (erroneous) sale of properties to CRTB.”42

80. The lead committee may wish to seek clarification of how the expansion of CRTB might interact with “the Crichel Down Rules”.

81. The SPF also questioned whether NDPBs such as Historic Environment Scotland would “no longer have the same level of protection under the Bill as had been previously envisaged when they were an Agency of Government”, suggesting that were this to be the case, there could be significant financial implications for its estate and for those of other public bodies.

82. A final point raised by the SPF related to what might happen in the event that a community body—

“successfully purchases via CRTB from, for example, a public sector authority but then two or three years later finds it is unable to continue to hold the property and needs to sell the asset on but is unable to. A public authority may well be obliged to resume ownership and we do not see that this has been factored into the financial implications of CRTB or asset transfer.”43

41 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 56
42 Scottish Property Federation, written submission
43 Scottish Property Federation, written submission
83. SportScotland expressed concerns in the context of its duties under funding rules stating—

“We would not wish to see liabilities handed to community groups who then need to seek financial or other support from national organisations such as ours which funding rules do not allow us to give. As a distributor of National Lottery resources, continuing to invest in line with national guidance, we are required to ensure we protect the additionality principle. This means lottery investment adds to, and does not replace, other funding sources, achieving additional impact to what otherwise would have been achieved. Furthermore our standard terms and conditions attached to awards state that lottery monies must be used for the purpose set out in the approved application and are non-transferable. Any proposed disposal of assets wholly or partially acquired, restored, conserved or improved through lottery (or Scottish Government funding) cannot be progressed without first giving us written notification and we are satisfied that full market value is being sought.”

84. The lead committee may wish to seek clarification of how rules relating to lottery funding might impact on CRTB.

Part 5: Asset Transfer Requests

85. The FM states that the Bill seeks to increase the amount of asset transfers from public bodies to community bodies by allowing such bodies to identify for themselves what they wish to achieve and the assets that they wish to acquire. It notes that the service which supports asset transfers was involved in 38 asset transfers from 2011 to 2014 but states that it cannot accurately predict future demand post-implementation.

86. The FM also states that the Government and/or local authority may decide to transfer an asset at lower than its market value following a full cost/benefit analysis which would include predicted future savings.

87. In respect of the Scottish administration and public bodies, the FM states that “the costs of these provisions will depend on the arrangements put in place and any additional costs will be met from existing resources.”

88. The FM provides no estimate of the financial impact of these provisions on local authorities stating that they “were not able to provide monetary estimates for any costs and savings that may arise.” It explains that this was in part due to the difficulty of predicting the number and variety of requests as well as the “complexity in predicting savings associated with better service provision.”

89. As with participation requests, the Bill Team explained that there were too many variables in terms of potential demand to quantify the potential volumes of asset transfers—

44 SportScotland written submission
“As we go forward, we will see what the bill involves, but we cannot give the committee a definite figure for how much it might be used.”

90. East Lothian Council estimated that it would require an additional full-time post costing around £40,000 per annum due to increased workloads arising from asset transfer requests. This additional work would include dealing with enquiries, the provision of detailed information, responding to and processing asset requests, preparing reports and valuations, responding to appeals, and providing plans and information. District Valuer valuations were also estimated to lead to fees of around £5,000 per annum.

91. East Lothian Council also estimated that its legal team could incur costs of between £400 and £1,200 per transaction and that it could spend around £500 each year in dealing with reviews (estimated at four per year).

92. The letter from the Minister dated 3 October provided further information on the possible costs of dealing with asset transfer requests. In addition to the estimates provided by East Lothian Council, the letter also highlights figures from the Forestry Commission Scotland which indicate that it currently incurs costs of between £7,500 and £12,500 per asset transfer under its National Forest Land Scheme which enables communities to buy or lease Forestry Commission land.

93. The letter also provided a breakdown of the potential costs to community bodies undertaking an asset transfer. This states that “the estimate for community transfer bodies to obtain agreement to transfer is between £13,480 and £25,040.”

94. With regard to overall costs, the Minister’s letter dated 24 October explained that “any estimate or range would be inherently flawed” as a result of uncertainties relating to the complexity of requests and demand over time.

95. East Lothian Council also drew attention to councils’ duty to secure best value in their activities and to maximise the use of their assets. It pointed out that—

“It may not necessarily be in the best interests of the community as a whole to transfer a surplus building to a community group on request. The community as a whole may be better-served by attracting an economic use of such a building. In other words, there might be both economic and community wellbeing justification in seeking interest from the market to see if we could attract an economic use which would increase footfall and employment in the local area.”

---

45 Scottish Parliament Finance Committee, Official Report, 8 October 2014, Col 54
46 East Lothian Council, written submission
47 Letter to Convener from Minister for Local Government and Planning dated 3 October 2014
48 Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014
49 East Lothian Council, written submission
96. Fife Council agreed that it was “difficult to estimate savings, especially if assets are being disposed at less than market value (as has been the case in transfers to community organisations).” With regard to potential costs it stated that—

“Local Councils may need to develop a cross Service team with a suitable skill mix to fully implement and manage any programme of transfer of assets. There is also an unknown potential cost to Councils as they will require to be reactive to communities’ aspirations. In addition to suitable community work expertise to engage with local organisations, legal, financial and property management skills may be required.”

97. However, Fife Council did confirm that it did not expect these costs to be prohibitive in terms of implementing the Bill.

98. South Lanarkshire Council also noted that it could incur costs relating to asset transfers where it had to retain a property off market while the process was ongoing. These could include costs in relation to empty property rates, insurance, security, utility bills, repairs and maintenance. Noting that it could also lose income where the community body sought a reduction in price or rent (which it stated could be expected “in most cases”), it also drew attention to its responsibility to ensure that any such reduction was “clearly set against community benefits.”

99. NHS Lothian echoed these concerns stating—

“The longer and more complex the disposal process becomes, the greater the cost to the public sector body. Non-domestic rates will be incurred, security costs will have to be paid and the potential for deterioration and vandalism increases.”

100. In addition to these costs, NHS Lothian shared the views of East Lothian Council, suggesting that “the increased complexity and more onerous process may necessitate additional staff resources and a greater demand for consultancy services” as well as costs relating to legal fees and the valuation of assets.

101. In terms of potential savings, South Lanarkshire Council acknowledged that these were more difficult to identify as they would depend on the specific proposal. It stated that savings could be made if the alternative to asset transfer was demolition or if maintenance and operational costs were to be borne by the community organisation. However, it also pointed out that these savings could also be achieved through a sale or lease on the open market.

—

50 Fife Council, written submission
51 South Lanarkshire Council, written submission
52 NHS Lothian, written submission
53 South Lanarkshire Council, written submission
102. COSLA’s submission stated—

“Very little information on the potential cost savings have been outlined, as again this will be demand driven and COSLA is concerned that these savings may have been overstated. COSLA would welcome clarity around this area of the Financial Memorandum.”

103. The Committee invites the lead committee to ask the Minister to respond to COSLA’s request for further clarity in this area.

104. NHS Lothian drew attention to anecdotal evidence that local authorities might regard the transfer of assets to community groups as a cost saving exercise and expressed concerns that such groups might not have “the funds nor the capacity to maintain these areas once a lease has been drawn up.”

105. It also expressed concerns that public bodies could incur losses as a result of the Bill—

“There may be potential costs to public service bodies as a result of land not necessarily being disposed of at true market value. Public bodies may bear a cost if they are not properly financially compensated for any asset transfers under Part 5 of the Bill. The Bill does not appear to require public bodies to be compensated for asset transfers.”

Part 6 – Common Good Property

106. The FM states that as of 31 March 2011, local authorities managed common good assets valued at £219 million. It explains that the Bill seeks to improve transparency around such assets and to increase community involvement in decisions regarding their identification, use and disposal.

107. To this end, the Bill will require local authorities to establish and maintain a register of common good assets and to invite community groups to comment on it in draft form.

108. Fife Council pointed out that the Bill does not amend the law of common good to allow local authorities to use certain categories of common good land for other purposes such as building new schools. It went on to suggest that this might have unintended financial consequences for local authorities as it would reduce their options for using their land. This, it suggested, could force councils to “acquire land from third parties at cost rather than making best use of existing resources.”

---

54 COSLA, written submission
55 NHS Lothian, written submission
56 Fife Council, written submission
**Part 7 – Allotments**

109. The Bill replaces existing legislation relating to allotments, “updating and clarifying” the requirements on local authorities.

110. Local authorities will be required to provide more allotments when certain trigger points are reached in relation to numbers on a waiting list.

111. The FM states that local authority costs “will be dependent on how much provision is required to meet their targets, how much provision is actually possible due to land availability and costs, and factors such as the local cost of land and whether road access, toilets etc. need to be created.” It also states that estimates provided by some local authorities indicate a cost ranging from £1,900 to £6,250 per plot and from £21,000 to £150,000 for a whole site. The FM states that demand is variable, with some local authorities facing substantial demand whilst others would need no more plots to meet this target.

112. North Ayrshire Council, however, stated that its response to a recent COSLA consultation had indicated an upper limit of £250,000 for a whole site.  

113. South Lanarkshire Council drew attention to the right of the Scottish Ministers to prescribe the size of allotments, which it stated would—

“clearly impact on the cost to the Council since a prescribed size will mean that the Council will have to consider this when acquiring land. Clearly, the larger an allotment is the greater the cost to the Council.”

114. Whilst Glasgow City Council pointed out that—

“Specific costs are noted for the aspects of the Bill relating to allotments but this focuses on the administrative costs as opposed to the capital investment costs. The council believes that the capital investment costs would be significant.”

115. COSLA also suggested that significant financial implications could arise for local authorities as a result of the development of new allotments, “in particular, where this includes the provision of roads for access and facilities such as toilets and access to water on site” and expressed concerns that the costs of site maintenance and utility bills had not been considered in the FM.

116. In oral evidence, the Bill Team agreed that costs in relation to allotments would be “dependent on existing provision and demand” but explained that the FM’s figures

---

57 North Ayrshire Council, written submission
58 South Lanarkshire Council, written submission
59 Glasgow City Council, written submission
60 COSLA, written submission
were based on information provided by “the 15 out of 32 local authorities that responded” to its consultation.\footnote{Scottish Parliament Finance Committee, \textit{Official Report, 8 October 2014, Col 48}}

117. The Minister’s letter dated 24 October confirmed that—

“the costs associated with the allotments provisions will depend on the amount of provision already in place compared with any unmet demand, as well as the local cost and availability of land.”\footnote{Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014}

118. However, it went on to state that “the figures provided by local authorities provide some examples but do not allow robust national estimates to be constructed.”

119. The Committee invites the lead committee to seek clarification as to whether additional resources will be made available to any local authorities which incur significant additional costs as a result of the duty to provide additional allotments.

Part 8 – Non-Domestic Rates

120. The FM states that, in effect, this provision allows local authorities “to create localised relief schemes to respond to local needs and demands.” Any such discretionary reliefs awarded by a local authority must be funded from within that authority’s existing resources and not at the expense of the [Government’s central NDR] pool.”

121. The Bill does not give local authorities equivalent powers to levy any additional rates.

122. Fife Council stated that “in effect it proposes the establishment of localised relief schemes which could be used to help incentivise development and investment in areas deemed appropriate by the local authority.”\footnote{Fife Council, written submission}

123. However, Fife Council also noted that whilst this could create opportunity, it could also lead to additional costs in terms of administration costs and the loss of income arising from the reliefs themselves. It further pointed out that the Bill explicitly prevented local authorities from raising NDR in other areas to compensate for any loss of income.

124. East Lothian Council stated that any reliefs would have to be funded by savings elsewhere and would ultimately be borne by council tax payers. It further suggested that the Bill could be expected to lead to a marked increase in applications for NDR relief and related disputes and in their complexity which would inevitably impact on its workload. This additional work, it suggested, could lead to a reduction in the

\footnotesize
\begin{itemize}
\item \footnote{Scottish Parliament Finance Committee, \textit{Official Report, 8 October 2014, Col 48}}
\item \footnote{Letter from Minister for Local Government and Planning to Convener of Finance Committee dated 24 October 2014}
\item \footnote{Fife Council, written submission}
\end{itemize}
collection of NDR as the absorbing of the additional workload could leave its Business Rates Team with fewer resources to target poor payers.

125. East Lothian Council did acknowledge that longer-term financial benefits could result from the targeted use of reliefs to stimulate economic growth in certain areas, but stated that in the short-term, it would “be costly in a time of monetary constraint as we would be funding any reduction.”

126. North Lanarkshire Council also suggested that “the new localised relief scheme has the potential to benefit larger/Council Tax rich local authorities at the expense of other local authorities.”

127. The SPF raised the issue of whether local authorities might seek to spread the costs of NDR relief among local landlords and expressed the hope that central government would provide some financial support for the policy.

CONCLUSION

128. The lead committee is invited to consider this report as part of its scrutiny of the Community Empowerment (Scotland) Bill’s FM.

---

64 East Lothian Council, written submission
65 North Lanarkshire Council, written submission
66 Scottish Property Federation, written submission
Local Government and Regeneration Committee

Community Empowerment and Regeneration Bill

Note by Clerk on Delegated Powers and Law Reform Committee Report on Bill

Introduction

1. This note invites the Committee to consider the report by the Delegated Powers and Law Reform Committee on the Bill and in light of the recommendations in the report provides some advice on the options available.

Background

2. All Bills on introduction which contain delegated powers are considered by the Delegated Powers and Law Reform Committee. To aid their consideration the Government provided the Committee with a memorandum setting out the reasons for taking each power and seeking to justify the particular type of power chosen. After consideration of the memorandum and subsequent exchanges, including on this occasion taking oral evidence from officials, the committee has reported to the lead committee.

3. The Delegated Powers and Law Reform Committee report came to a number of conclusions, set out in bold in their report, before inviting LG&R to consider their report. While most of the powers are considered appropriate (see Annex A) a number are subject to detailed criticism. The full report is circulated separately for members and Annexe 1 contains a list of those paragraphs printed in bold as conclusions referred to in this note.

Issues

4. While members will wish to consider the report in its entirety paragraphs 55 – 80 refer to Part 4 upon which the RACCE committee are leading. Members may, in the first instance, wish to ignore those paragraphs and concentrate on the remainder of the report.

6. Aside from Part 4 provisions the Delegated Powers and Law Reform Committee invited LG&R to seek responses, clarification, elaboration and detail from the Minister on three specific Parts of the Bill. Those can be sought during the Minister’s evidence session with the Committee on 12 November.
Part 1 Powers

7. The Delegated Powers and Law Reform Committee at paragraphs 33-35 summarise their concerns relating to powers in Part 1 of the Bill. In summary these relate to the absence of any role for the Scottish Parliament in the setting and reviewing national outcomes and also issues around the lack of specification around who should be consulted on these powers. Members may recollect the Auditor General indicated similar concerns in her oral evidence.

Part 2 Powers

8. The Delegated Powers and Law Reform Committee at paragraph 43 calls on the Scottish Government to make specified powers in this part of the Bill subject to Affirmative procedure. Recommendations of this kind are not unusual and often simply accepted by the Scottish Government.

9. Concern is also made about the power in section 10 for Scottish ministers to issue guidance about the carrying out of the functions of each CPP partner. These are summarised in paragraphs 51 to 53 with paragraph 54 proposing a solution. Reasons for the taking of this power and how it could be exercised as well as the absence of any mechanism to make the power binding or enforceable are highlighted. This may link into concerns the Committee have discussed around the leadership and operation of CPPs. These types of issues were also raised in evidence by the Auditor General.

Options available to the Committee

9. If the Committee, having taken account of the Delegated Powers and Law Reform Committee report and any subsequent evidence received, are dissatisfied with the Delegated Powers in the Bill there are various options that could be pursued.

10. The Committee could request further evidence from the Minister either before or after finalising the stage 1 report.

11. Should the Committee ultimately share the Delegated Powers and Law Reform Committee concerns this would be a factor in reaching the conclusion on whether the general principles of the Bill are to be agreed in the report to Parliament.

12. The Committee might wish to seek assurances from the Minister that the concerns of the Delegated Powers and Law Reform set out in the Financial Memorandum will be addressed at stage 2 by amendments.
Action

19. Members are invited to:
   i. note the concerns raised and to take the opportunity on 12 November to pursue matters with the Minister in oral evidence as suggested by the Delegated Powers and Law Reform Committee report.

David Cullum
Clerk
7 November 2014.
17.iv. More generally, the Committee finds it unsatisfactory that the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed and their scope clearly delineated.

v. The points made above are concerning to the Committee given the significance of many of the powers in this Bill. .......

33. The Committee has concerns that the process for setting and reviewing national outcomes under Part 1 of the Bill leaves no role for the Parliament to scrutinise the outcomes that are proposed to be set or, as the case may be, revised, before they are published.

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

35. Sections 1(2) and 2(5) provide that before exercising the power to determine or revise the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee recognises that the determination of which bodies and persons ought to be consulted is a policy matter. The Committee draws to the attention of the Local Government and Regeneration Committee however that sections 1(2) and 2(5) keep the scope for consultation as broad as possible, but equally they do not guarantee any minimum level of consultation that might be suitable, depending on whether it is proposed to set or change the outcomes generally or to have a more focussed review.

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.
51. The Committee accordingly draws to the attention of the Local Government and Regeneration Committee that it has concerns, in principle, as to the proposal that the guidance should be binding on community planning partnerships and partners. This concern has a number of factors, and a power of this nature is unusual.

52. The Scottish Government officials were not clear in their oral evidence to the Committee as to the reasons why this power was being taken and how it could be exercised. It was indicated that there is a policy intention that some matters would be fundamental enough to be binding on a national level, while others would not and could permit local discretion and innovation. This distinction, however, is not provided for in section 10.

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.
Delegated Powers and Law Reform Committee

63rd Report, 2014 (Session 4)

Community Empowerment (Scotland) Bill at Stage 1
Agenda Item 1
12 November 2014
Local Government and Regeneration Committee
LGR/S4/14/28/7
Delegated Powers and Law Reform Committee

63rd Report, 2014 (Session 4)

Community Empowerment (Scotland) Bill at Stage 1

Published by the Scottish Parliament on 5 November 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
   (a) any—
   (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
   (ii) [deleted]
   (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
   (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
   (c) general questions relating to powers to make subordinate legislation;
   (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
   (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act; and
   (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.
   (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meetings on 19 August, 30 September, 28 October and 4 November the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Community Empowerment (Scotland) Bill (“the Bill”) at Stage 1. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF BILL

2. This Government Bill was introduced by John Swinney MSP on 11 June 2014. The lead Committee is the Local Government and Regeneration Committee. The Bill makes wide-ranging provision in relation to various types of community body and their rights. It is divided into 9 parts.

3. Part 1 places a duty on the Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, to be reviewed every 5 years. Public authorities are to have regard to the national outcomes in carrying out their functions, as are all persons carrying out functions of a public nature. The Scottish Ministers are obliged to prepare and publish reports about the extent to which the national outcomes have been achieved.

4. Part 2 concerns community planning. Section 4(1) provides that local authorities, the bodies listed in schedule 1 of the Bill and community bodies must participate with each other in community planning. ‘Community planning’ is defined as planning that is carried out with a view to improving the achievement of outcomes in relation to the area of a local authority resulting from, or contributed to by, the provision of services delivered by or on behalf of the local authority or the persons listed in schedule 1 to the Bill. Schedule 1 lists bodies such as National Park authorities, Scottish Enterprise and the Scottish Fire and Rescue Service.

---

1 Community Empowerment (Scotland) Bill [as introduced] available here: http://www.scottish.parliament.uk/S4_Bills/Community%20Empowerment%20(Scotland)%20Bill/b52s4-introd.pdf
5. Part 2 of the Bill also makes provision in relation to local outcomes improvement plans. These are plans prepared and published by community planning partnerships setting out local outcomes to which the partnership must give priority with a view to improving the achievement of the outcome, as well as a description of the proposed improvement action and the time period within which the improvement is to be achieved. The local outcomes improvement plan is to be kept under review by the community planning partnership.

6. Part 3 of the Bill relates to participation requests. A participation request is a request made by a community controlled body to a public authority to permit the body to participate in an outcome improvement process. In making a request, the community body must set out details of any knowledge, expertise and experience the body has in relation to the specified outcome. The Bill also sets out the process to be followed by an authority where it receives a participation request.

7. Part 4 of the Bill does two things. Firstly, sections 27-47 make amendments to Part 2 of the Land Reform (Scotland) Act 2003 (“the 2003 Act”). The principal amendment is an extension of the community right to buy (currently available in respect of rural land only) to all land in Scotland. Sections 27-47 of the Bill also make various other changes to Part 2 of the 2003 Act so as to improve the working of those provisions.

8. Secondly, Part 4 creates a new community right to buy in respect of abandoned or neglected land. Section 48 of the Bill introduces a new Part 3A into the 2003 Act. The provisions set up a process whereby community bodies may apply to the Scottish Ministers to exercise their right to buy land which is abandoned or neglected. The new right to buy differs from the existing rights in Part 2 of the 2003 Act in one important respect, which is that the right to buy abandoned or neglected land may be exercised in circumstances where the owner of the land does not wish to sell.

9. Part 5 of the Bill relates to asset transfer requests. An asset transfer request is a request made by a community controlled body to a ‘relevant authority’ which seeks permission to buy, lease or otherwise acquire rights in respect of property owned by that relevant authority. A ‘relevant authority’ is a body listed in schedule 3 to the Bill, and includes local authorities, the Scottish Ministers, SEPA and the Scottish Court Service. Part 5 sets out the requirements to be met by a community body before it can make a request, the process to be followed in making a request and the rights of appeal that are available in the event that a request is refused.

10. Part 6 of the Bill relates to common good property. “Common good” refers to assets originally acquired from former burghs to which local authorities have taken title. The Bill requires each local authority to establish and maintain a common good register which must be available to members of the public for inspection. The Bill also imposes requirements on local authorities to publish details of any decision it proposes to take to dispose of common good assets or to change their use. The authority is required to have regard to any representations it receives in relation to the proposed disposal of common good assets.
11. Part 7 of the Bill concerns allotments. It replaces the provisions of the Allotments (Scotland) Acts of 1892, 1922 and 1950 which are repealed in their entirety. The Bill also repeals some provisions of the Land Settlement (Scotland) Act 1919. The Bill creates a new definition of ‘allotment’ and ‘allotment site’, and it places a duty on local authorities to hold and maintain waiting lists for allotments and to take reasonable steps to provide more allotments if the waiting list exceeds key trigger points. The Bill creates compensation rights in favour of tenants of allotments for disturbance, deterioration of an allotment site or loss of crops.

12. Part 8 concerns non-domestic rates. It amends the Local Government (Financial Provisions etc.) (Scotland) Act 1962 and the Local Government Finance Act 1992. The effect of the amendments is that local authorities are given power to grant localised relief from business rates. Any relief granted is to form part of a relief scheme which is funded by the authority. Before creating such a scheme, the authority is required to have regard to the interests of persons liable to pay council tax which is set by that authority.


DELEGATED POWERS

14. The Scottish Government provided the Parliament with a memorandum on the delegated powers provisions in the Bill (“the DPM”). Due to the volume of powers in the Bill the Committee adopted a staged approach to its scrutiny. At its first consideration of the Bill, the Committee delegated authority to its legal advisers to ask written questions of the Scottish Government. The questions issued and the responses received from the Scottish Government are included in this report at Annex B.

15. At its meeting on 30 September, the Committee took oral evidence from Scottish Government officials on a number of powers in the Bill following receipt of the Scottish Government’s answers to the written questions.

16. The Committee makes no recommendation in respect of the powers listed at Annex A to this report. These powers are divided into powers with which the Committee was initially content; powers with which the Committee was content following written evidence from the Scottish Government; and powers with which the Committee was content following both written and oral evidence from the Scottish Government.

17. The Committee’s comments and recommendations on the remaining delegated powers in the Bill are detailed below. Before considering the individual powers, the Committee makes the following general observations:

---

2 The Delegated Powers Memorandum is available here: http://www.scottish.parliament.uk/S4_Bills/CE_DPM.pdf
i. The reasons advanced in the DPM for taking many powers in the Bill were not sufficiently detailed so as to enable the Committee to reach a view on whether those powers were acceptable in principle. With regard to several powers, the necessary information was only obtained following both written and oral evidence.

ii. The quality of some of the written answers provided by the Scottish Government in response to the Committee’s questions was inadequate, requiring the Committee to explore a number of issues further with Scottish Government officials in oral evidence. In relation to some key powers in the Bill, for example the power in the new section 97C(3)(a) of the 2003 Act, the answers given by the officials in oral evidence failed to provide the information sought by the Committee.

iii. In relation to the power in the new section 97C(3)(a) of the 2003 Act, the Committee remains in a position, having considered both written and oral evidence, whereby it is unable to form a view as to how this power is intended to be used. The Government has not provided an explanation for taking this power beyond a need to retain flexibility within the Bill. The Committee considers that explanation to be inadequate in light of the significance of this power and what it appears to permit. The Committee further finds it concerning that the thinking behind a power of such significance to the scope and application of the Bill appears still to be in the early stages of development. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

iv. More generally, the Committee finds it unsatisfactory that the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. The Committee considers that there is a clear need for delegated powers to be fully explained, their terms appropriately framed and their scope clearly delineated.

v. The points made above are concerning to the Committee given the significance of many of the powers in this Bill. The quality of delegated powers memoranda in particular is an issue that the Committee is monitoring on an ongoing basis, and will continue to raise in its annual and quarterly reports and, as appropriate, with the Minister for Parliamentary Business.
Recommendations

Sections 1 and 2 – National outcomes

Powers conferred on: the Scottish Ministers
Powers exercisable by: published determination
Parliamentary procedure: none

Scrutiny procedure for setting and review of national outcomes

18. Section 1(1) of the Bill places a duty on the Scottish Ministers to determine national outcomes in relation to Scotland that result from, or are contributed to by, the carrying out of functions of Scottish public authorities, cross-border public authorities, and other persons carrying out functions of a public nature. Such bodies are required to have regard to the national outcomes in carrying out their functions.

19. Section 1(2) of the Bill places a requirement on the Scottish Ministers to consult on the national outcomes and section 1(3) requires Ministers to publish the outcomes. There is no provision for Parliamentary scrutiny of the outcomes prior to their publication, or for the outcomes to be laid before Parliament once published. The Committee sought written explanation as to why it is considered appropriate for the power to decide on national outcomes to be exercisable by informal published determination as opposed to by, for example, Scottish statutory instrument.

20. The Scottish Government’s written response to the Committee indicated that Parliamentary scrutiny will focus on progress toward the national outcomes, not the setting of the outcomes. The response also indicated that it may be that the Parliament would wish to debate the outcomes set out by Ministers, and that the arrangements put forward by the Bill do not prevent that.

21. The Committee explored these issues further with the Scottish Government officials at its meeting on September 30th. Anne-Marie Conlong of the Scottish Government’s Performance Unit explained that—

“The Scottish Government believes that what we have set out in the provisions reflects the current separation of powers between the Scottish Government and the Parliament. It would be for the Scottish Ministers to co-ordinate Government business and to set out the strategic direction for Government – within its overall accountability to the Parliament, of course - and the Parliament would exercise a scrutiny function, holding ministers to account on progress toward the national outcomes and objectives.”

22. Furthermore, officials indicated that they were—

---

3 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3
“…more than happy to take back for further consideration with Ministers the Committee’s views on the respective roles of the Parliament and the Government in setting the outcomes.”

23. There is recent comparable provision for national outcomes to be set out in subordinate legislation. Section 3(2) of the Public Bodies (Joint Working) (Scotland) Act 2014 requires that a local authority and a health board must, in preparing an integration plan, have regard to the national health and wellbeing outcomes in section 5 (and the integration planning principles in section 4). Section 5(1) enables the Scottish Ministers to prescribe the national health and wellbeing outcomes by regulations which are subject to the affirmative procedure.

24. In the DPM for the 2014 Bill, the Scottish Government explained why it was considered appropriate that the health and wellbeing outcomes should be prescribed by regulations subject to the affirmative procedure: “By allowing Ministers to set national outcomes, it provides for a consistent focus nationally. It is appropriate that outcomes are set by regulations as this requires a process of consultation to be followed, contemporaneously with integration plans being prepared, to inform the outcomes. It also provides flexibility for the Scottish Ministers to amend outcomes in the future, in response to innovation locally and changing circumstances, and in order to support continuous improvement.... This is subject to affirmative procedure as the national outcomes are fundamental to health and social care integration in that they express its practical purpose. Whilst this level of scrutiny involves more parliamentary time, it is considered that the national outcomes are sufficiently important to justify this, and it is not anticipated that they will be regularly amended.”

25. The Committee considers that there is a clear comparison to be drawn between the health and wellbeing outcomes for Scotland as provided for by the Public Bodies (Joint Working) (Scotland) Act 2014, and the national outcomes under this Bill. The Committee also observes that the national outcomes set under the Bill will be applicable to a wider range of bodies than the health and wellbeing outcomes therefore the requirement for Parliament to have a role in the process of setting or reviewing the outcomes is, in the Committee’s view, greater.

26. The Committee acknowledges, however, that there are alternative ways to afford the Parliament an opportunity to scrutinise the national outcomes. By way of example, the Committee notes the provision in section 16 of the Judiciary and Courts (Scotland) Act 2008. Section 16 relates to guidance issued by the Scottish Ministers or the Lord President as to the manner of exercise by the Judicial Appointments Board for Scotland of its functions. Section 16 provides that before issuing guidance, the Scottish Ministers or, as the case may be, the Lord President, must lay a draft of the proposed guidance before the Parliament. The guidance must not be issued until 21 days after it has been laid before Parliament, and the Parliament may by resolution make recommendations in relation to the draft guidance to which the Government or the Lord President must have regard. The Parliament does not, however, have power to prevent the guidance from being issued.

---

4 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.3
27. While the Committee acknowledges that the Parliament would not be prevented from debating such outcomes as are set by the Scottish Government, the Committee considers that a more active scrutiny role for the Parliament in relation to the outcomes would be appropriate and should be set out on the face of the Bill. One clear way to enable Parliament to scrutinise the outcomes would be for the outcomes to be prescribed in regulations subject to scrutiny by the affirmative procedure, although as noted above, the Committee acknowledges that there may be alternative ways in which the Parliament could be afforded a role in considering the outcomes and that the formulation of such a role is ultimately a matter for the Scottish Government.

Consultation on the national outcomes

28. Sections 1(2) and 2(5) of the Bill provide that before determining or revising the outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee explored in the oral evidence session why, in principle, the provision does not specify any persons or bodies which (at a minimum) the Scottish Ministers would need to consult.

29. It was explained in the oral evidence session that the intention is to leave the potential scope for consultation as broad as possible, which has been favoured by stakeholders. In some cases consultation would be very wide, but in other cases focussed. The intention is not to limit or narrow the scope of the persons who may be consulted. It was indicated that if the Committee was of the view that the Bill should include a minimum list of bodies that suggestion would be considered further, however the Scottish Government would not want to limit the scope of potential consultation in any future review.

30. Sections 1(2) and 2(5) provide that the consultation on the national outcomes will be with such persons as (subjectively, at the particular time) the Scottish Ministers consider appropriate. The Committee accepts that this approach keeps the scope for consultation as broad as possible, but observes that, equally, it does not offer any guarantee of consultation at a minimum level, where the outcomes are to be set or revised.

31. The Committee also notes that, by comparison, section 5 of the Public Bodies (Joint Working) (Scotland) Act 2014 specifies a minimum level of required consultation before the national health and wellbeing outcomes are prescribed by regulations. Ministers must consult in advance local authorities, Health Boards, each integration joint board at the time established, and in respect of various groups set out in section 5(4) involved in health and social care provision, such persons appearing to be representative of the group as the Ministers think fit.

32. The Committee considers that a list of persons or bodies that, at a minimum, the Scottish Ministers must consult when national outcomes are set or reviewed should be adopted in the Bill. Such an approach could be tailored to ensure a minimum base for consultation while leaving it open to Ministers to consult such other bodies as they think fit in the particular circumstances, having regard to the nature of the outcomes being set or revised.
33. The Committee has concerns that the process for setting and reviewing national outcomes under Part 1 of the Bill leaves no role for the Parliament to scrutinise the outcomes that are proposed to be set or, as the case may be, revised, before they are published.

34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.

35. Sections 1(2) and 2(5) provide that before exercising the power to determine or revise the national outcomes, the Scottish Ministers must consult such persons as they consider appropriate. The Committee recognises that the determination of which bodies and persons ought to be consulted is a policy matter. The Committee draws to the attention of the Local Government and Regeneration Committee however that sections 1(2) and 2(5) keep the scope for consultation as broad as possible, but equally they do not guarantee any minimum level of consultation that might be suitable, depending on whether it is proposed to set or change the outcomes generally or to have a more focussed review.

Sections 4(6), 8(3), 16(2) and 51(3) – power to add or remove bodies

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations (sections 4(6) and 8(3)); order (sections 16(2) and (3) and 51(2) and (3))
Parliamentary procedure: negative

36. Section 4(6) allows Ministers to modify schedule 1 of the Bill to expand the list of community planning partners to which Part 2 of the Bill applies. The power also enables Ministers to remove bodies from the list, thereby reducing the scope of Part 2 of the Bill. Section 8(3) provides a similar power in respect of the list of community planning partners which have governance requirements in relation to community planning as set out in section 8(2).

37. Sections 16(2) and (3) provide powers to expand or reduce the list of public service authorities to which a participation request may be made in terms of Part 3 of the Bill (the list is contained in schedule 2). Sections 51(2) and (3) create similar powers in respect of the list of relevant authorities to whom an asset transfer request may be made under Part 5 (the list of relevant authorities is set out in schedule 3).

38. These powers are subject to the negative procedure. The Committee sought explanation from the Scottish Government as to why that was considered appropriate as opposed to the affirmative procedure, which would afford the
Parliament a greater measure of scrutiny over the exercise of these powers which not only permit the modification of primary legislation, but which could also have a considerable impact on the scope and application of Parts 2, 3 and 5 of the Bill.

39. In response, the Scottish Government explained that the negative procedure was considered appropriate for the exercise of these powers, as adding or removing bodies from a list in one of the schedules to the Bill is unlikely to be controversial. The response also drew a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the 2002 Act”) where a power to amend a list of bodies is subject to the negative procedure. In oral evidence, the officials explained that these powers provide flexibility to make changes to the relevant lists that should be considered necessary.

40. The Committee considers that the exercise of these powers is capable of having a considerable impact on the scope and applicability of some of the key provisions in the Bill. For example, the power in section 4(6) could in theory be used to considerably expand the application of Part 2 of the Bill by adding large numbers of bodies to the list of community planning partners contained in schedule 1. Conversely, it could also be used to reduce the application of Part 2 of the Bill by removing bodies from the schedule 1 list.

41. The Scottish Government draws a parallel with section 4(1) of the Freedom of Information (Scotland) Act 2002 as a similar provision to add or remove bodies to or from a list which is also subject to the negative procedure. The Committee observes, however, that more recent powers to make amendments to lists of bodies have adopted a different procedural approach. For instance, section 25 of the Public Services Reform (Scotland) Act 2010 provides that an order which adds a body to the list in schedule 5 is subject to the affirmative procedure, but to the negative procedure where a body is removed from the list. A similar example pertains in section 7 of the Regulatory Reform (Scotland) Act 2014 (power to modify the list of regulators).

42. These examples, which post-date the 2002 Act, suggest that where bodies are added to lists, the powers should be subject to the affirmative procedure. Conversely, where the application of the Bill is shrunk and bodies are removed from lists, the negative procedure may be appropriate. Standing the absence of reasons why the present Bill should not follow these more recent examples, the Committee recommends that the Scottish Government amend the Bill at Stage 2 so as to require these powers to be subject to the affirmative procedure where they add bodies to the lists, but to the negative procedure where they are exercised so as to remove bodies from the lists.

43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.

Section 10 – Power to issue guidance
44. Section 10(1) provides that each community planning partnership must comply with any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the partnership by Part 2 of the Bill. Section 10(2) provides that each community planning partner must comply with any guidance issued by the Ministers about the carrying out of functions conferred on the partner by Part 2. Before issuing either set of guidance, the Ministers must consult such persons as they think fit. Section 95 provides that the guidance will be published on issue, in such manner as the Scottish Ministers think fit.

45. The Committee explored two aspects of the power to issue guidance in the oral evidence session: a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

46. As to a), the proposed automatically binding nature of the guidance is a change to the provision in section 18 of the Local Government in Scotland Act 2003. That section provides that every person initiating, maintaining, facilitating or participating in community planning shall, in doing so, have regard to any guidance provided by the Scottish Ministers about community planning. The consultation requirement in section 10(3) is similar to that already in section 18(2) of the 2003 Act.

47. The Committee explored in oral evidence the considerations underlying the proposal that the guidance should be binding. A key aspect as outlined by the Scottish Government officials was that the policy intention is that there should be local discretion and local innovation in how community planning is approached and dealt with, but there may be some matters that the Scottish Government feels are fundamental enough to apply on a national level, where the guidance could specify binding requirements on community planning partnerships and partners.

48. In reply to the question how it is foreseen that this power of binding guidance would be utilised, the officials responded—

“It is hard to know at the moment...the guidance will be subject to quite a lot of consultation before we put it out...It is hard to say what particular provisions will be used for, but that will emerge from the process.”

49. The Committee considers that a power to issue guidance which is automatically binding according to its terms is highly unusual, and might be expected to require particular explanation as to why the power is needed. A binding requirement in such guidance would in law be binding in the same way as if the provision was contained in a statutory instrument or in an Act. The Bill

---

5 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.9
appears to put no enforcement mechanism in place for compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under part 2 of the Bill.” But this is a broad requirement, and there is no enforcement or scrutiny mechanism proposed in the Bill to review whether matters required by the guidance are properly covered as concerning the various functions conferred in Part 2.

50. It was explained to the Committee in evidence that the policy intention is that some matters covered by the guidance should be matters which would be binding on a national level, while others would permit local discretion. However, the scope of the power in section 10 makes no such distinction, for instance by specifying a range of matters or requirements which possibly could be included as binding.

51. The Committee accordingly draws to the attention of the Local Government and Regeneration Committee that it has concerns, in principle, as to the proposal that the guidance should be binding on community planning partnerships and partners. This concern has a number of factors, and a power of this nature is unusual.

52. The Scottish Government officials were not clear in their oral evidence to the Committee as to the reasons why this power was being taken and how it could be exercised. It was indicated that there is a policy intention that some matters would be fundamental enough to be binding on a national level, while others would not and could permit local discretion and innovation. This distinction, however, is not provided for in section 10.

53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.

54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.

Section 48 inserting section 97C(3)(a) into the 2003 Act – Eligible land

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>the Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>regulations</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>affirmative</td>
</tr>
</tbody>
</table>
55. The new Part 3A of the 2003 Act as inserted by Part 4 of the Bill will apply only in respect of “eligible land”. Eligible land is defined in the new section 97C(1) of the 2003 Act as land which the Scottish Ministers consider is wholly or mainly abandoned or neglected. The remainder of the new section 97C provides further detail as to the meaning of eligible land.

56. Section 97C(3)(a) provides that eligible land does not include land on which there is a building or structure which is an individual’s home, unless the building or structure falls within such class or classes as may be prescribed. The word ‘prescribed’ adopts the definition set out in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The effect of section 97C(3)(a), therefore, is that Ministers may make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may constitute an individual’s home.

57. The DPM states that the policy intention is that eligible land should not include an individual’s home. It also states that this power will enable there to be flexibility as to exactly what buildings or structures constitute an individual’s home. The power is subject to the affirmative procedure and the DPM states that this is considered appropriate, given that what constitutes “eligible land” is fundamental to the scope and application of the new Part 3A.

58. While the Committee agrees that this power is fundamental to the scope and application of the new Part 3A of the 2003 Act, it does not consider that the DPM provides a sufficiently detailed explanation as to how it is intended to be used. The Committee accordingly sought written clarification from the Scottish Government as to what this power enables the Scottish Ministers to do and how it is intended that the power will be used.

59. In its written answer, the Scottish Government confirmed that section 97C(3)(a) enables Ministers to add prescribed classes of building back into the pool of eligible land to which the new Part 3A applies. The Government explained that it was unable to provide examples of the kinds of building or structure which may be prescribed using this power, but that the power “allows for flexibility”. The Government also stated in its written answer that it would be happy to consider changes to the provision should the Committee be of the view that that would be of benefit to the Bill.

60. At the oral evidence session on 30 September, Members sought further information from the Scottish Government officials as to why this power was being taken, standing the lack of detailed explanation in the Government’s written response and the DPM. Members also asked what factors – other than flexibility – were taken into account in framing this power.

61. In oral evidence Dave Thomson from the Scottish Government’s Land Reform and Tenancy Unit repeated that the power was required to allow for flexibility—
“The flexibility on those powers is the key part at the moment. The policy intent is not to take people’s homes away in any circumstances, but still to allow community bodies to take control of assets. Essentially, the powers that we are looking to take on through that provision are simply to allow that flexibility to set out in detail the types of buildings or assets that can be included or excluded. At the moment, we do not have specific examples, hence the current need for flexibility in those powers.”

62. Rachel Rayner of the Scottish Government Legal Directorate also commented on this power:

“[A]ny regulations made by Ministers would have to comply with the European Convention on Human Rights. As you will be aware, Article 8 of the ECHR provides a right to respect for private and family life, which would include respect for a person’s home, and that would have to be taken into account were the power to be used.”

63. The Committee finds it concerning that the taking of a power as significant as that proposed in section 97C(3)(a) of the 2003 Act has not been justified by the Scottish Government, either in written or oral evidence, beyond the apparent need for flexibility. While the Committee accepts that some flexibility in the available powers could be appropriate to ensure that the scheme envisaged by the new Part 3A of the 2003 Act is capable of operating effectively in practice, it considers that flexibility is not in and of itself sufficient explanation for the taking of such an important power. The Committee also observes that any regulations made by the Scottish Ministers in exercise of this power - or indeed any power - require to be ECHR-compatible.

64. In oral evidence, the Scottish Government officials explained that the policy intent underpinning these provisions is not to take individuals’ homes away in any circumstances. The power appears, however, to directly contemplate making buildings and structures available for compulsory acquisition by community bodies despite the fact that those buildings and structures are an individual’s home. If it is not the Government’s intention to make homes available for acquisition by Part 3A community bodies as the officials explained in oral evidence, the Committee finds it difficult to decide what this power is intended to do.

65. The Committee further finds it unsatisfactory that the Parliament is being asked to confer this power upon the Scottish Ministers without having received satisfactory answers to questions asked about its intended use. When asked to give examples to demonstrate how the power might be used in practice, the Scottish Government did not do so either in written or in oral evidence. The Committee considers it unsatisfactory that the Parliament is being asked to approve powers where the thinking behind them appears still to be in the early stages of development and where officials are unable to offer a detailed explanation of the circumstances in which it is planned that they will be used.

---

6 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.10
7 Delegated Powers and Law Reform Committee, Official Report, 30 September 2014, Col.12
66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.

67. The power permits the Scottish Ministers to make regulations prescribing buildings or structures which are eligible for acquisition by a Part 3A community body notwithstanding the fact that such buildings or structures may be described as an individual’s home. The Committee’s questions of the Scottish Government, both written and oral, did not elicit a clear explanation from the Scottish Government as to its reasons for taking this power, or how the power is intended to be exercised. The Scottish Government also did not provide the Committee with any examples of the kinds of building or structure that may be prescribed in regulations made in exercise of this power.

68. The Committee finds it unsatisfactory that the Parliament is being asked to confer a power of this significance upon the Scottish Government in the absence of a detailed explanation as to why it is necessary or what it is for and in circumstances where the thinking underpinning the power appears to be in the early stages of development. Together with the lack of examples of the kinds of building or structure that may be prescribed using this power, the Committee finds it difficult to reach a view as to whether the power is acceptable in principle and recommends that the lead Committee explore the power further as part of its further consideration of the Bill.

69. The Scottish Government may wish to reflect on its reasons for taking this power as the Bill progresses through the Parliament and the lead Committee may wish to explore the power further when it takes oral evidence from the Minister for Local Government and Planning.

Section 97N(1) and (3) – Effect of Ministers’ decision on right to buy

Powers conferred on: the Scottish Ministers
Powers exercisable by: regulations
Parliamentary procedure: affirmative

70. New section 97N(1) of the 2003 Act provides that Ministers may, by regulations, make provision for or in connection with prohibiting prescribed persons from transferring or otherwise dealing with land which is the subject of an application under Part 3A during the prescribed period. Section 97N(2) provides that those regulations may in particular include provision prescribing transfers or dealings which are not prohibited; requiring or enabling prescribed persons to register prescribed notices in the Register of Community Interests in Abandoned or Neglected land; and in prescribed circumstances, requiring information to be incorporated into prescribed deeds relating to the land.
71. Section 97N(3) provides that Ministers may, by regulations, make provision for or in connection with suspending, during the prescribed period, such rights in or over land in respect of which a Part 3A community body has made an application as may be prescribed. Section 97N(4) provides that such regulations may in particular include provision specifying rights to which the regulations do not apply, and rights to which the regulations do not apply in prescribed circumstances.

72. The Committee considers that it may be appropriate for the Scottish Ministers to make regulations for the purpose of suspending rights in or over land for the duration of the period within which Ministers are considering a Part 3A community body’s application. The Committee also considers it appropriate that these powers are subject to the higher level of scrutiny afforded by the affirmative procedure. Despite these conclusions, the Committee considers that there are issues of clarity with the drafting of these powers. The Committee explored these issues with the Scottish Government both in written and oral evidence.

73. Section 97N uses the word “prescribed” a number of times. “Prescribed” has a specific definition in section 98(1) of the 2003 Act, meaning “prescribed in regulations made by the Scottish Ministers”. The Committee wrote to the Scottish Government to ask whether the word “prescribed” as used multiple times in section 97N is intended to attract the definition of that term set out in section 98(1) with the effect that section 97N in fact creates a new power to make subordinate legislation each time that word is used, in addition to the two free-standing powers conferred by sections 97N(1) and (3).

74. In its written response, the Scottish Government confirmed that the use of the word “prescribed” in section 97N is intended to attract the definition of that term set out in section 98(1). The Government also stated, however, that its view is that section 97N confers only two powers to make subordinate legislation: the power in section 97N(1) and that in section 97N(3). Sections 97N(2) and (4) are intended to provide further detail of the matters which regulations made under subsections (1) and (3) may cover, and the use of the word “prescribed” in those subsections does not have the effect of conferring separate powers to make subordinate legislation.

75. The Committee considers that if the word “prescribed” as used in section 97N is intended to adopt the definition in section 98(1) of the 2003 Act, it seems clear that multiple powers are being conferred. The existence of the definition means that wherever the word “prescribed” appears in the 2003 Act, including where it appears as a result of amendments made to that Act by this Bill, it is an instruction to the reader to construe the word as conferring a power upon the Scottish Ministers to make regulations unless contrary provision is made.

76. The Committee therefore asked the Scottish Government officials for further explanation of the power when it took oral evidence on 30 September. The Scottish Government officials reiterated their position, which is that section 97N confers only two powers to make subordinate legislation. The officials offered to write to the Committee following the meeting to explain further their position. A letter dated 8 October 2014 is attached at Annex C.
77. This is a technical drafting point. The Committee does not object to the powers in sections 97N in principle, not to the selection of the affirmative procedure as the appropriate level of Parliamentary scrutiny over the powers. Nevertheless, the Committee finds that the use of the word “prescribed” in section 97N is apt to cause confusion when construed in accordance with section 98(1), and, as such, draws the conclusion that the Bill should be clarified at Stage 2.

78. The Scottish Government’s intention is that section 97N confers only two powers to make subordinate legislation: the power to make regulations prohibiting the transfer of land pending a decision on a Part 3A application in section 97N(1); and the similar power to suspend other rights e.g. rights of pre-emption or redemption that is set out in section 97N(3). The Committee considers, however, that this intention is not readily compatible with the use of the word “prescribed” in section 97N and its definition in section 98(1) of the 2003 Act. Other provisions in the Bill use the word “prescribed” and rely on the definition of that term in section 98(1) to create a free-standing power to make subordinate legislation. It is not clear from the evidence received from the Scottish Government why that same reliance does not apply in the case of the word as used in section 97N.

79. The Committee calls on the Scottish Government to clarify the new section 97N of the Land Reform (Scotland) Act 2003 as inserted by section 48 of the Bill. Section 97N makes repeated use of the word “prescribed”, and the Scottish Government has explained to the Committee, both in written and oral evidence, that while the use of the word “prescribed” in section 97N is intended to adopt the definition of that term in section 98(1) of the 2003 Act meaning “prescribed in regulations made by the Scottish Ministers”, section 97N is considered to confer only two powers to make subordinate legislation: the power in section 97N(1) and the power in section 97N(3).

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.
Annex A

The Committee was content with the following powers on first consideration of the Bill:

Section 7(3) - local outcomes improvement plan: progress report
Section 12(2)(d) - power to prescribe other matters to be addressed in an application for incorporation
Section 15(2) - meaning of “community participation body”
Section 18(1) - regulations (further provision about participation requests)
Section 19(7)(a) - participation requests: decisions
Section 19(8) - participation requests: decisions
Section 21(6) - power to specify information to be published about the outcome improvement process
Section 24(3) - modification of outcome improvement process
Section 25(4) - reporting (of outcome improvement process)
Section 28(2) - power to prescribe bodies that are “community bodies”
Section 28(7) - power to define a “community”
Section 33 - power to specify the description of land
Section 37 - power to prescribe the information to be provided to the ballotter by the Scottish Ministers
Section 37 - power to prescribe information to be provided to the ballotter by a community body
Section 38 - power to make regulations which set out the information a community body must provide to the Scottish Ministers
Section 40 - ballot not conducted as prescribed
Section 48 - power to prescribe that eligible land does not include certain land for the purposes of Part 3A
Section 48 - power to approve/direct the transfer of property on winding up

Section 48 - power to set out the definition of a “community”

Section 48 - payment of charges for copies of entries in the Part 3A Register of Community Interests in Abandoned or Neglected Land

Section 48 - power to prescribe the application form for Ministers to consent to a Part 3A community body’s right to buy

Section 48 - power to prescribe the manner in which an application under Part 3A is given public notice

Section 48 - power to prescribe how the ballot of the community is undertaken and the form of the ballot return to Ministers

Section 48 - Ministers’ notification of their decision on an application under Part 3A

Section 48 - power to direct that community body’s right to buy is extinguished

Section 48 - power to make provision in relation to compensation

Section 48 - power to make grants towards Part 3A community bodies’ liabilities to pay compensation

Section 48 - rules affected by Ministers in relation to the Lands Tribunal Act 1949

Section 50(2)(a) - designation of a community transfer body

Section 50(2)(b) - designation of a class of bodies as community transfer bodies

Section 53 - power to approve or direct the transfer of property on winding up

Section 54(3) - power to make provision about information relating to land in respect of which an asset transfer request is proposed

Section 55(8) - power to prescribe a time for a decision notice to be given

Section 55(9) - power to make provision regarding the information contained in a decision notice and the manner in which it is to be given
The Committee was content with the following powers after receiving written evidence from the Scottish Government:

Section 12 - power to establish a body corporate for community planning purposes
Section 28(6) - meaning of “community”
Section 48 (inserting sections 97C(2), 97C(3)(b) and 97C(4)) - eligible land
into the 2003 Act

Section 48 - register of Community Interests in Abandoned or Neglected Land

Section 48 - right to buy: application for consent

Section 73(1) - allotment site regulations: additional provision

The Committee was content with the following powers after receiving both written and oral evidence from the Scottish Government:

Section 48 - provisions supplementary to section 97D

Section 54(1) - power to make further provision about asset transfer requests

Sections 58(3) and 59(3) - appeal or review of decisions on asset transfer requests

Section 80(7) - power to remove unauthorised buildings from allotment sites
Annex B – Written Correspondence

Part 1 – National Outcomes

1. Sections 1-3 – publication of national outcomes

a) Sections 1(3), 2(4) and 3(1) provide for the publication of the national outcomes that are determined by the Scottish Ministers, and reports about the extent to which they have been achieved. The Scottish Government is asked to explain why it has been considered appropriate that the power to decide on the national outcomes should be exercisable by informal published determination, and not by Scottish statutory instrument which could be subject to Parliamentary scrutiny and procedure.

The decision was taken not to use Statutory Instruments as we envisage the primary role of Parliament to be scrutiny of progress towards the national outcomes. It may well be that the Scottish Parliament may wish to debate on the national outcomes set by the Scottish Ministers and the arrangements proposed do not prevent that.

b) Section 1(2) states that before determining the national outcomes, the Ministers must consult such persons as they consider appropriate. The Scottish Government is asked to explain why this provision does not specify any persons or bodies which (as a minimum requirement) the Ministers would consult.

The intention here is to leave the potential scope for consultation as broad as possible. In some cases, e.g. where a review is of a technical nature and focuses on specialist or statistical issues, it may be more appropriate to limit the scope of consultation to those who have expertise and experience in that area. In other cases, the review may be of a more general nature and in those cases, it would appropriate to consult more widely. Consultation with appropriate people would also include consultation with the public as a whole if appropriate.

Part 2 – Community Planning

2. Section 4(6) – power to modify schedule 1

The power in section 4(6) is capable of being used to considerably expand the list of community planning partners to which Part 2 of the Bill applies, or alternatively to considerably reduce the scope by removing bodies that are listed in schedule 1.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 4(6) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).
This power provides flexibility to make future changes to the list of community planning partners in schedule 1. The power to amend the primary legislation is restricted to amending the list of public bodies who are members of a community planning partnership. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

3. Section 8(3) – power to modify section 8(2)

The power in subsection (3) of section 8 is capable of being used to considerably expand the list of community planning partners in subsection (2) which have governance requirements in relation to community planning, or alternatively to considerably reduce the scope by removing bodies from that list.

The Scottish Government is asked to explain therefore why it is considered more suitable that any regulations made under section 8(3) should be scrutinised by the negative procedure - rather than by the affirmative procedure where regulations add or remove persons from the schedule 1 list, and the negative procedure for regulations which amend an entry (which could adjust an entry on a change of name of a body).

The power relates to making changes that may be required as the nature and practice of community planning evolves and the provisions of this part of the Bill take effect. It is restricted to allowing the Scottish Ministers to amend a list of public bodies who are partners in a community planning partnership so that they are also subject to a governance role. As with the power in section 4(6), it is not considered that the exercise of this power would generate controversy. It is considered that the negative procedure offers an appropriate level of parliamentary scrutiny.

4. Section 10 – power to issue guidance

The Scottish Government is asked to explain why the powers to issue guidance in section 10 are appropriate, and how the powers could be used. In particular an explanation is sought as to-

a) why the guidance is proposed to be binding on community planning partnerships and partners, rather than there being a requirement that they will have regard to it; and

b) why there is no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament.

With regard to the request for an explanation as to why the powers to issue guidance are appropriate, the Scottish Ministers have inherent power to issue
guidance and the Bill does not confer express powers to that effect. The purpose of section 10 is to confer a status on any guidance Ministers may issue regarding the carrying out of functions by the Community Planning Partnership. Section 10(3) requires that any guidance must be the subject of consultation before it is issued.

a) The Scottish Government believes that this section will help to enable the dissemination of best practice in community planning across Scotland and is necessary to support 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 area. With regard to the obligation to comply with guidance, we would of course be happy to consider amending this to an obligation to have regard to the guidance if the Committee feel it would be of benefit to the Bill.

b) There is currently no provision for any Parliamentary procedure to apply to the guidance or for it to be laid before Parliament as it was considered that the guidance would deal with a range of issues in some detail, including administrative issues as necessary and that this was not a necessary or appropriate use of valuable Parliamentary time and resources.

5. Section 12 – power to establish bodies corporate

a) The Scottish Government is asked to explain why the wide power to specify any other matters in section 12(3)(h) is required, and how this power could be used.

b) What additional matters would this power enable, beyond the ancillary powers to make incidental, supplementary or consequential provisions contained in sections 96(1) and 97?

Section 12(3)(h) is in the same terms as, and replaces, section 19(3)(h) of the Local Government in Scotland Act 2003. The inclusion of 12(3)(h) provides the necessary flexibility to deal with any new development which may need to be addressed when exercising the power in section 12(1). It also makes it clear that the provision that can be included in the regulations made under section 12(1) is not restricted to the matters listed in section 12(3)(a) to (g).

Part 3 – Participation Requests

6. Section 16 – meaning of “public service authority”

a) The powers in section 16(2) and (3) are capable of being used to considerably expand the list of “public service authorities” to which participation requirements could be made in accordance with Part 3 of the Bill, or alternatively to considerably reduce the scope by removing bodies (or types of body) from the list in schedule 2.

The Scottish Government is asked to explain therefore why it is considered more suitable that any order made under sections 16(2) and (3) should be scrutinised by the negative procedure - rather than by the affirmative
procedure where the order proposes to remove persons from the schedule 2 list and/or designate more persons or classes of person as “public service authorities” and the negative procedure for an order which amends an entry in schedule 2 (which could adjust an entry on a change of name of a body).

b) The Delegated Powers Memorandum (“DPM”) states in relation to section 16(2) that the Scottish Ministers are included in schedule 2, but this is not the case. Clarification is sought as to whether there is any intention to include the Ministers in the schedule.

a) These powers provide flexibility to make future changes to the list of public service authorities in schedule 2. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community participation body may make a participation request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

b) The reference to the Scottish Ministers in the Delegated Powers Memorandum in relation to section 16(2) was an error.

Part 4 – Community Right to Buy Land

7. Section 28(6) – duty to provide information about community right to buy

The power in the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, appears to be subject to the negative procedure while the DPM refers to the power being subject to the affirmative procedure. Section 98(5) of the 2003 Act, as amended by paragraph 4 of schedule 4 to the Bill, provides that regulations made under the new section 34(4A) will be subject to the affirmative procedure, but there is no reference to regulations made under the new section 34(4B), the effect of which would appear to be to leave such regulations to take the negative procedure.

Can the Scottish Government explain whether this is an error or, if the Scottish Government intends the power to be subject to the negative procedure, can it explain why this is considered appropriate?

The Scottish Government agree that the new section 34(4B) of the 2003 Act, as inserted by section 28(6) of the Bill, is subject to the negative procedure but that it would be appropriate for this power to be subjective to affirmative procedure, as stated in the DPM.

8. New section 97C of the 2003 Act – eligible land

a) Can the Scottish Government provide more information as to how it envisages using the power in the new section 97C(2) of the Land Reform
(Scotland) Act 2003 (“the 2003 Act”)? The DPM refers only to the power being used to prescribe matters which are “too detailed to include in the primary legislation”. Can the Scottish Government provide any examples of matters which it is intended will be prescribed in regulations made in exercise of this power so as to inform the Committee’s consideration of the power?

b) The Scottish Government is asked for a fuller explanation as to the relationship between the powers in the new section 97C(3)(a), 97C(3)(b) and 97C(4) of the 2003 Act, as inserted by section 48 of the Bill. How is it considered that these powers will interact?

c) Does the Scottish Government agree that the power in section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies despite the fact that such buildings may constitute an individual’s home? Can the Scottish Government provide any examples of classes of building or structure which it intends to prescribe in regulations made in exercise of this power?

(a) The matters that Ministers should take account of in considering whether land is wholly or mainly abandoned or neglected is currently under discussion with stakeholders. Some examples of matters might include the physical condition of land, environmental or historic designations affecting the land and the extent to which the land is having a detrimental effect on the local environment, where environment can be physical or social.

(b) The relationship between the various powers is that that section 97C(3)(a) provides that land on which there is an individual’s home is not eligible land but this doesn’t apply to classes or descriptions of land set out in regulations. This will enable exceptions to be made should this be considered appropriate in the future. Section 97C(3)(b) will enable regulations to provide that land associated with an individual’s home such as private gardens and land forming the curtilage of the home will not be eligible land, and section 97C(4) allows regulations to be made treating buildings or structures as homes and so the land which these are situated on will not be eligible land. For example a house that is used just for holidays and which doesn’t constitute an individual’s home could be treated as a home and so the land which it is on would not be eligible land.

(c) Section 97C(3)(a) enables Ministers to add prescribed classes of building back into the ‘pool’ of eligible land to which the new Part 3A applies. At this point in time, we are not able to give specific examples, but this power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.

9. Section 97E(4) - power to make an order relating to matters connected with the acquisition of the land

Can the Scottish Government explain how the power in the new section 97E(4) is intended to be exercised and why it requires to be drawn in such wide terms? Can the Government provide any examples of the kinds of
modifications to primary legislation that the Scottish Government anticipates making in exercise of this power as permitted by the provision in section 97E(5)?

The underlying reason behind the power in section 97E(4) is to ensure that the process for buying back land from a community body is open and transparent as well as robust. There are examples of similar powers e.g. sections 1 and 2 of the Transport and Works (Scotland) Act 2007.

10. Section 97F(6) – power to modify the information and documents that are to be contained in the Register of Community Interests in Abandoned or Neglected Land

The Scottish Government is asked to explain further its reasons for taking the power to modify new sections 97F(3) and (4) of the 2003 Act as inserted by section 48 of the Bill. In particular, can the Government explain the circumstances in which it considers that it may be appropriate to modify those subsections given that they exempt, in circumstances where a Part 3A community body requires it, any information or documents relating to the raising or expenditure of money by that body from being entered in the Register of Community Interests in Abandoned or Neglected Land?

There is already a similar power in respect of the Register of Community Interests in Land in Part 2 of the Land Reform (Scotland) Act 2003 (section 36(6)) so the power in section 97F(6) ensure that Parts 2 and 3A are consistent. It is allows the Register to be kept relevant should there be any changes to the requirements of community bodies, or the information that they are required, by law, to provide.

11. Section 97G(5)(c) – power to prescribe information in an application form for Ministers to consent to a Part 3A community body’s right to buy

a) The Scottish Government is asked to justify the power in section 97G(5)(c) as distinct from the power in section 97G(5)(a). The DPM provides the same information in respect of both powers, however the power in section 97G(5)(a) is a power to prescribe the form of an application under Part 3A of the 2003 Act, whereas the power in section 97G(5)(c) is a power to prescribe kinds of information to be included in such a form, or to accompany such a form.

b) Can the Scottish Government explain why this power is necessary, and can it provide examples of the types of information it intends to prescribe in regulations made in exercise of this power?

These powers allow the style of the form, and the information contained in that form, to be set out in regulations. These are two separate things, hence the need for the two powers. There are examples of the sort of form (both in terms of style and content) anticipated in The Community Right to Buy (Prescribed Form of Application and Notices) (Scotland) Regulations 2009.
12. Sections 97N(1) and 97N(3) – effect of Ministers’ decision on right to buy

a) The Scottish Government is asked whether the word “prescribed”, as used multiple times in the drafting of the new section 97N of the 2003 Act is intended to capture the definition of that term as set out in section 98(1) of the 2003 Act with the effect that new section 97N confers multiple powers to make subordinate legislation, or whether the matters which may be “prescribed” as referred to in that new section are intended to form specific aspects of the two standalone powers expressly conferred by sections 97N(1) and 97N(3).

b) If the Scottish Government does not intend for the word “prescribed” to adopt the definition in section 98(1) of the 2003 Act when it is used in section 97N, can it explain how the Bill prevents this?

Section 98(1) of the 2003 Act defines “prescribed” for the Act and provides that it means “prescribed by regulations made by Ministers”. We agree that the use of “prescribed” in section 97N attracts that definition. Each time the expression is used in section 97N it effectively confers power to specify something in regulations. These powers operate in the context of the powers in section 97N(1) and (3). For example, in section 97N(1) “prescribed period” means the period set out in regulations made by Ministers prohibiting the transfer or other dealing in certain land.

Part 5 – Asset Transfer Requests

13. Section 51(2) – power to modify schedule 3

The Scottish Government is asked whether, given that the power in section 51(2) of the Bill permits the modification of primary legislation, this power should be subject to the affirmative procedure.

This powers provides flexibility to make future changes to the list of relevant authorities in schedule 3. The power to amend the primary legislation is restricted to amending the list of public bodies to whom a community transfer body may make an asset transfer request. Adding a body to, or removing it from, the list is unlikely to generate controversy. An example of a power to amend a list of public bodies in a schedule to primary legislation which is subject to negative procedure can be found in section 4(1) of the Freedom of Information (Scotland) Act 2000. In these circumstances it is considered that subjecting the exercise of the power to negative procedure is appropriate.

14. Section 54(1) – power to make further provision about asset transfer requests

The Scottish Government is asked why this power requires to be drawn in such wide terms. The specification of particular matters about which regulations may be made in exercise of this power does not appear to restrict the overall width of the power, and consequently the power would
appear to be capable of being used to make different provision, subject only to the requirement that that provision be “about asset transfer requests”. The Government is invited to explain why such a wide power is considered to be necessary.

Section 54(2) sets out some of the general scope of the matters which it is envisaged that the regulations relating to asset transfer requests will deal with and the wording of section 54(1) is to ensure flexibility so that other matters which it may be appropriate to include could be included if necessary. As the Committee point out the power is limited by the requirement that the regulations only enable provisions to be made in relation to asset transfer requests and, as the Delegated Powers Memorandum states, the further provision that may be required regarding process and procedure is a largely administrative matter.

15. Section 58(3) and 59(3) – power to prescribe asset transfer request appeal and review procedures, time limits and the manner in which appeals and reviews are to be conducted

a) The Scottish Government is asked for further explanation of the meaning of sections 58(4) and 59(4) of the Bill, which provide that the provision that may be made by virtue of the powers in section 58(3) or 59(3) to prescribe the procedure to be followed in an appeal against or a review of a decision on an asset transfer request includes provision that the manner in which an appeal or review, or any stage of an appeal or review, is to be conducted is to be at the discretion of, respectively, the Scottish Ministers or the local authority.

b) The Scottish Government is asked to explain what aspects of an appeal or review it considers might be made subject to the discretion of the Scottish Ministers or the local authority in exercise of these powers, and why the Government considers that that would be appropriate, as opposed to specifying the appeals procedure in the subordinate legislation that is made under sections 58(3) or 59(3).

Section 58(4) and 59(4) follow the approach taken in relation to appeal processes in planning (see section 267(1C) of the Town and Country Planning (Scotland) Act 1997). The intention is that the regulations setting out appeal processes would enable the choice of appeal procedure to be flexible and selected in particular cases to meet the needs of that case. It is envisaged, as with planning appeals, that the selection of the appropriate process for conducting the appeal, for example, by written submission or a form of hearing, or mix of procedures would be determined by the Scottish Ministers in the light of the circumstances of each case.

Part 7 – Allotments

16. Section 73(1) – Allotment site regulations: additional provision

Can the Scottish Government explain why the power in section 73(1) is proposed to be exercised by the local authority by way of regulations rather
than, for example, by way of byelaws subject to confirmation by the Scottish Ministers (as under section 202 of the Local Government (Scotland) Act 1973)? If it is considered appropriate for the power to be exercised by the local authority by regulations, can the Scottish Government explain why there are no proposals for the regulations to be confirmed by the Scottish Ministers or laid before Parliament, or otherwise to be subject to scrutiny?

The Scottish Government does not consider that the power in section 73(1) falls within the scope of byelaws. Section 201 of the Local Government (Scotland) Act 1973 (“the 1973 Act”) confers power on local authorities to make byelaws, “for the good rule and government of the whole or any part of their area, and for the prevention and suppression of nuisances therein”. Contravention of byelaws is generally dealt with by summary prosecution. The current approach has been taken since the Regulations are not principally intended to address nuisance and as such carry no criminal sanctions. The sanctions are that the lease holder would be given notice to quit the allotment.

The Scottish Government does not consider it necessary for the regulations proposed under section 73(1) to be confirmed by the Scottish Ministers, laid before Parliament, or otherwise subject to scrutiny. The Scottish Government notes that byelaws made under the 1973 Act have no effect until confirmed (section 202(3)), however contravention of byelaws will generally carry criminal sanctions. Management rules under the Civic Government (Scotland) Act 1982 (to which the Scottish Government considers the proposed regulations more similar) are not subject to confirmation or other scrutiny. In line with the procedure for making management rules, section 74 of the Bill requires local authorities to consult interested persons and provides for a period of notice with an opportunity for representations before regulations under section 73(1) are made. Given the relatively narrow purpose of such regulations and the absence of offences relating to their contravention, the Scottish Government does not consider scrutiny by the Scottish Ministers or Parliament to be required.

17. Section 80(7) – power to remove unauthorised buildings from allotment sites

Can the Scottish Government explain further the intended purpose of the power in section 80(7) and in particular what further provision, standing the procedural requirements already contained in section 80(5) and (6), the power in section 80(7) might be used to make?

Section 80(7) permits, but does not require, the Scottish Ministers to expand upon the detail of the procedure set down in sections 80(5) and 80(6). At this point in time, we are unable to give specific examples of what further provision this power might be used to make, but the power allows for flexibility. We would of course be happy to consider changes if the Committee feel it would be of benefit to the Bill.
Annex C – Letter from the Scottish Government:


Section 97N(1) and (3) of new Part 3A of the Land Reform (Scotland) Act 2003 (“2003 Act”) (to be inserted by section 48 of the Bill) confers powers on the Scottish Ministers to make regulations. Section 98(1) of the 2003 Act defines “prescribed” for the purposes of the 2003 Act and provides that it means “prescribed by regulations made by [the Scottish] Ministers”. The use of “prescribed” in section 97N has, and is intended to have, the meaning given in section 98(1) of the 2003 Act.

Regulations made under section 97N(1) and (3) will be subject to the affirmative procedure (see paragraph 2(5)(a)(ii) of schedule 4 to the Bill which will amend section 98(5) of the 2003 Act).

Section 97N(1) confers powers on the Scottish Ministers to make regulations prohibiting the transfer of land or otherwise dealing with land if a Part 3A community body has made an application under section 97G for consent from the Scottish Ministers to exercise the right to buy that land. Subsection (1) further provides that those regulations can specify: (a) the period of the prohibition; and (b) the persons who are prohibited from transferring or otherwise dealing with the land during that period.

Subsection (2) sets out particular matters that may be included in any regulations made under subsection (1). Subsection (2) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(1).

So for example, the power conferred by section 97N(1) would enable the Scottish Ministers to make regulations setting out that, from when the landowner has received notice of an application made by a Part 3A community body until the Scottish Ministers have determined the application, the landowner is prohibited from transferring or otherwise dealing in the land that is the subject of the application. The regulations could also make provision for exceptions to this prohibition. The regulations would be made under section 97N(1) and would specify the period of the prohibition and also specify the persons to whom the prohibition applies. In making exceptions to the prohibition, the Scottish Ministers would still be making use of the power in subsection (1) as further described in subsection (2).

Section 97N(3) confers power on the Scottish Ministers to make regulations making provision for suspending rights in or over land in respect of which a Part 3A community has made an application under section 97G. This subsection further provides that the regulations may specify: (a) the period during which the rights are to be suspended; and (2) the rights that are to be suspended during that period. Subsection (4) provides that any regulations made under subsection (3) may include provision specifying any rights that are not to be suspended and any
rights to which the regulations do not apply in certain circumstances. These are examples of the kind of provision that may be made in regulations made under subsection (3). Subsection (4) is not a free-standing power. It provides some detail of the provision that may be made in regulations made under section 97N(3).
Members who would like a printed copy of this *Numbered Report* to be forwarded to them should give notice at the Document Supply Centre.

**PRICES AND SUBSCRIPTION RATE**

**OFFICIAL REPORT** daily editions

- Single copies: £5.00
- Meetings of the Parliament annual subscription: £350.00

**WRITTEN ANSWERS TO PARLIAMENT QUESTIONS** weekly compilation

- Single copies: £3.75
- Annual subscriptions: £150.00

---

Printed and published in Edinburgh by RR Donnelley and available from:

Blackwell’s Bookshop
53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell’s Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

- Telephone orders and inquiries
  0131 622 8283 or
  0131 622 8258

- Fax orders
  0131 557 8149

E-mail orders, subscriptions and standing orders
business.edinburgh@blackwell.co.uk

Scottish Parliament
All documents are available on the Scottish Parliament website at:

www.Scottish.Parliament.uk

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille, large print or audio), please contact:

Public Information Service
The Scottish Parliament
Edinburgh EH9 1SP

- Telephone: 0131 348 5000
- Fon: 0131 348 5395 (Gàidhlig)
- Textphone users may contact us on 0800 092 7100.
- We also welcome calls using the RNID Typetalk service.
- Fax: 0131 248 5601
- E-mail: sp.info@scottish.parliament.uk

We welcome written correspondence in any language.
Local Government and Regeneration Committee

Community round-table event, Dumfries, 27 October 2014

Notes of workshop sessions with community groups

Purpose

1. This paper provides Members with the notes taken during the Committee’s Community Engagement Event held in Dumfries on Monday 27 October 2014. They are not intended to be an exhaustive account of every aspect of each group’s discussion, but are an attempt to capture the main points which arose.

Background

2. On Monday 27 October 2014, The Local Government and Regeneration Committee visited Dumfries as part of the Committee’s scrutiny of the Community Empowerment (Scotland) Bill. On the day the Committee held an engagement event at the Easterbrook Hall which was attended by 48 members of the local community.

3. The event was held in round table format, with MSPs each chairing a table and a scribe noting down the general topics being discussed.

Summary

4. There were a number of themes that emerged through the discussions, with a general consensus that the purpose of the Bill was to empower communities. Lack of community involvement during consultations, difficulties and complications arising from the current asset transfer process and a lack of provision to allow communities to appeal against decisions made by local bodies were all discussed during the event.

Paul Nicholson
Committee Assistant
6 November 2014
MSP chair: Kevin Stewart

Scribe: Jon Orr

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

Main points from the group’s discussion were as follows:

- Bill presents tremendous opportunities if local authorities think differently and innovatively. They need to show leadership and take responsibility for improving community engagement.

- Should the work be process driven?

- LAs work differently to one another and adopt different approaches. How will it be possible to ensure consistency across the country, so that the bill’s aim to enhance community engagement is met?
• Past measures have included co-production and public private partnerships but what has happened to those approaches? Will the bill lead to further flash-in-the-pan measures?

• The regulations in place are a major stumbling block. They are interpreted differently, so different areas take different approaches. Some apply the regulations rigorously; others are more flexible in their interpretation.

• Some see the bill as an attempt to offload public services from councils to community or third sector organisations. That misconception needs to be tackled.

• Community groups are set requirements that are too rigorous. For example, a community group may lease part of a property and want to upgrade it and other parts of the property that are not in use, but it is not able to because it does not have ownership of the building.

• The community asset transfer process can be very lengthy – the timescales can be in years, but council personnel do not remain static. One group experienced a situation whereby the council contact changed each year. Although having a named person was welcome and valuable, time is invariably lost as the new person gets up to speed with the discussions. Therefore, the knowledge transfer process needs to be improved.

• DG One (A leisure and entertainment complex) is temporarily closed. Participants were unclear about whether the council had consulted let alone spoke to anyone on the matter; rather, it was thought that the matter was dealt with internally.

**Improving community participation**

• A need to change people's mindset. Most people do not want to engage - the referendum is the obvious exception - and it is not known how to energise them. However, the view was also expressed that, on the back of the referendum, there was the opportunity to enhance and encourage community-level engagement. Indeed, there was a need to tap into that enthusiasm to the benefit of all.

• Two interrelated issues are at play: the perception that the provision of many services is a council duty; and the desire on the council’s parts to control the services. Indeed, it was considered that the council did not want to relinquish control as it considers that many of the services fall within its sphere of influence.
At the same time, the prevalent attitude among many was “I pay council tax, so why should I or another organisation get involved in providing that service?”

- There are high levels of fatigue among those who choose to participate, because they are not seeing the benefits of their work. That point must be recognised and dealt with.

- Loreburn hall was cited as an example of how community empowerment can work. [NB You will need to request details if you want to know more because none were provided at the time.]

- People need to have the opportunity to engage and to have the confidence to ask questions and then pursue a course of action to its natural conclusions.

Community capacity building

- Giving people a helping hand and providing them with the relevant knowledge and training was seen to be vital.

- There is a big mismatch between community groups. Some are very confident – for example, the members may have a professional background and/or have a wider experience; while others lack that and do not have similar skills or life experiences.

- An area’s demographics are important, because that may determine involvement.

- Some argued that having in place a formal process helps, particularly given the need to deal with formal bodies such as councils. However, there is a need to help people to take the initial step and inform them how to proceed.

Case study

- Young people wanted a skateboarding and BMX-ing park but had no idea how to progress the idea or what it involved. [Speak to the Dumfries and Galloway Community Learning and Development Service Nithsdale representative for more details/to get the location.] An initial group of 25 rapidly expanded to 245. With support, they learned, among other things, how to make presentations; they also designed their own website, and met an engineer to discuss their plans. Two and a half years and £180,000 later, the park was built.
• However, it took another group in Stewartry/Castle Douglas 10 years to achieve similar plans. Why? The levels of bureaucracy were completely different. Furthermore, given the area’s demographics, it is possible that older peoples’ views held greater sway, which led to delays.

Funding

• During the community learning and development review, groups were funded year on year, which is very disruptive – there is no ability to plan for the future. Furthermore, community involvement in the review was minimal, with only two and a half week consultation period, which took place over the October holidays.

Access to council information

• Groups need to know how to access council papers. They also need someone on the ground to explain the process and to help them to understand what questions they should ask.

Consultations

• Council consultations need to be full and honest. There is a feeling that only lip service is being paid by the council. Appropriate deadlines are also key. The driver for the council’s single outcome agreement consultation was seen to be the council’s need to set up the SOA by a specific time. [Note from Jon. That point doesn’t really make sense – to me, at least. Perhaps it would be better to say that councils need to take account of people’s needs when setting deadlines rather than just falling in line with their standard, internally devised deadlines. You could perhaps also refer to councils needing to plan better so that they set appropriate consultation timescales.]

• The local council asked residents where they should make cuts. However, that approach assumes knowledge of what services are provided. The reality is that people are, on the main, familiar only with those services that they access. Even so, it was considered that, post-consultation, the council was overproviding certain services. It was unknown what happened to people’s input. Demographics are important, too, because they can skew the results in favour of certain groups.

Single outcomes agreements

In addition to the above:

• Community’s/people’s priorities are either not or only slightly reflected in SOAs.
• Many seem related to HEAT targets.

• Police ward plans should be the building blocks for the SOAs.

• The council has its head in the sand. Is it simply taking on the Scottish Government’s priorities or does it want to genuinely consult people? It needs to decide what approach to take and be honest about its decision.

• The SOAs may be, in part, relevant to the people, but they were not devised by the people.

• Example of council attitude: “The community will get a bucket of sand and like it.” The council has no desire to let the community decide for itself whether it wants that bucket of sand and, if it does, to allow the community to put out that bucket of sand.

**General points on the bill**

• An idiot’s guide on how to deliver the bill should be provided.

• Huge efforts may be required to get the help of someone (in the council, for example) who may not be that interested in what a community group wants. The bill should help to challenge that situation and make the process easier.

• The bill should shift the power balance away from councils to community groups etc and make councils more accountable to communities for the delivery of services. That would be a good thing, but a culture change is required to make that happen, and people need to be provided with the necessary skills to allow them to progress projects.

• Local council does not have a common goods registers, so the bill will be helpful in that regard.

**Post-legislative scrutiny**

• Only by carrying out this work will it be possible to determine whether the bill is having the desired effect. If authorities and/or councillors, for example, are not held to account, they will carry on as before and the historical lack of transparency and openness will continue.

**The need to improve processes**
• They are overly complicated.

• The profusion of committees. Committees are set up when none are needed – for example, to agree how to spend as little as £1,000. Where is the value for money? What cost benefit analysis has been carried out?

• Several committees dealing with the same issue. The example cited was that four committees deal with common good land. Not only is that wasteful, but it makes it extremely difficult for people to know who to talk to or to understand the subject.

Councils

• Council has an 80-page constitution. In what way is that accessible for the people?

• Councillors do not reflect the people in the community; they also seem to represent their own interests. For example, how budgets are devolved seems designed to make councillors popular in their areas, so the operating environment is one of pork barrel politics. In addition, some councillors appear to use budgets to fund their pet projects.

• Local authorities fund groups and third sector organisations. There is always a tension present and a fear about the consequences of rocking the funding boat. Groups need the confidence to be able not only to put in requests, but to do so without any fear of a backlash for making such requests.

• Elected members’ responses to community groups and their ideas have included:

  “The community doesn’t know what’s good for it”.

  “We can’t let them try, because they will probably fail.”

  “If we let them try, they might fly.” [Note from Jon: I don’t know whether that was said in a negative or positive way; I am sure both are true – some councillors would be keen to provide support, while others would rather protect what they consider to be their responsibilities.]

• The council and NHS are risk averse. A good example is the continuation of the belief – both by GPs and some members of the population – that general
practitioners “know what is best for you.” The system remains patriarchal and some people devolve power to the GP.

Reform

- Concern expressed about the constant restructuring of services, which was not necessarily beneficial and certainly not driven by local communities.

Young people

- Two pupils were at the table. They said that they have a school council, but council members do not seek pupil’s views; rather, they have to approach the council. Therefore, there is much to do in the school environment to embed full and proper consultation.

- No work is under way to inform school pupils about the bill. That seems to be a missed opportunity. Given that many schools held referendum debates, perhaps pushing at an open door for the continued exploration of political issues. An idea would be to encourage debate on all major bills.

- It seems clear that early engagement would lead to a better understanding of community involvement and what can be achieved. The hope would be that pupils would take what they learn at school and be more actively interested in their community and participate in improving it.

Other points to note (and perhaps to research further)

- Dumfries and Galloway Council is working on a new lobbying council (include name of graduate who is working on that)

- The Scottish Rural Parliament’s inaugural meeting in Oban is taking place in the w/c 3 November. Norman McAskill, SCVO is heavily involved. Perhaps worth checking on whatever flows from the meeting as many of the themes discussed at the community event will be raised there, too. Perhaps also worth alerting RACCE committee clerks to the event, although I imagine that they know about it.

Air weapons etc

- Very little discussion took place as the group’s interests lay in the Community Empowerment (Scotland) Bill. One person, who had air weapons experience, commented on air weapons. He was supportive of the bill.
• One general question was raised about whether the bill was restrictive or would allow local authorities the ability to interpret it flexibly, to meet the needs of local circumstances.
The main points from the group’s discussion were as follows—

**Community Empowerment (Scotland) Bill**

**General**

- Questions about what definitions of “community” and “empowerment” were being used in Bill. Noted that communities of both interest and geography were covered; empowerment could mean many things – what did participants feel would empower communities?

- Capacity building in communities essential for success of many provisions in the Bill – and this needs to be resourced. Also, need to recognise how much time needs to be allowed for proper community capacity building. Even with this,
concern noted about the sustainability of community groups once key members cease to be involved.

- Concerns about decisions being made in name of a community without sufficient community engagement. But also noted the possibility of engagement raising expectations too much if views are then disregarded.
- People feel not being listened to by councils – opportunity for public to pose questions at start of council meetings?
- Communities will take on more responsibility if they own land/assets.
- Need to find new ways of organising community involvement – “clickicism” (examples in Australia?), that is, people using social media to engage in brief bursts. People don’t have time to attend meetings at certain times every week or to read lengthy consultation documents – but might have time to participate in shorter discussion on particular topic via social media, to share or like proposals, or consult a community noticeboard to see if they can volunteer for something at a time that suits them. Such approaches would engage young people much more.

Community planning

- Bill should allow more of a bottom-up approach to community planning. There was a successful community planning pilot in Dumfries in 2001 which involved lots of groups. This was prior to the creation of a community planning department within the council – now that there is such a department it was felt that there is not enough communication between different departments/groups at any level.

Asset transfer

- If assets are transferred, how will councils ensure that assets are operated properly (e.g. run safely with proper public liability insurance etc; run according to relevant restrictions if asset is a common good asset)? How will community groups access the funds the needed to manage assets – costs considerable in some cases?
- Public authorities shouldn’t be handing over problematic assets to community groups to run just because money is tight (and community groups may be able to access funding sources that public authorities can’t, especially for capital projects), especially if the community group involved is not yet properly prepared
for the size of the task. Not transferring assets until community groups properly prepared to take them on protects community/asset in the longer term.

Common good

- Dumfries and Galloway Council already has fairly robust common good register. Even so, the status of some assets is not known (and establishing status where common good is in play is difficult and expensive). If such an asset was transferred to a community group, how would they deal with any legal challenges concerning the status of the asset?

Community councils

- Variety in community councils noted – some stretched because of large area covered, some areas have no active community council, some community councils not very representative of community (need for younger people). Little investment in or support for community councils. Need for more consultation on definition of community council areas. Perception that community councils don’t do anything (and lack of formal powers noted – statutory consultee on planning applications main formal role) – come up with a more defined description of community council role?

Air Weapons and Licensing (Scotland) Bill

Air weapons

- Mixed views on licensing of air weapons. Agreement that should only introduce new licensing system if truly necessary. Is there existing legislation (e.g. on carrying of air weapons in public) that could be better enforced before resort to new licensing system or any alternatives (e.g. tracking weapons from manufacturer onwards)? Would licensing necessarily have prevented cases where people have been killed or injured by air weapons? And if perpetrators in such instances caught, what does licensing add?

- More specific concerns/questions about costs compared with shotgun or firearm licences, transitional arrangements for people who already own air weapons and on how police will apply “fit to be entrusted with air weapon” test.

Alcohol licensing

- Too easy for under-18s to drink in public places currently – but whether or not introduce further measures to try to reduce this, will still happen.

Taxis and private hire cars
• Greater use of private hire cars as opposed to taxis in rural areas. Concern, at certain times of week at least, is short supply rather than overprovision. Prices vary between private hire cars for same journey – should be greater consistency. In general, some support for idea that same regulations should apply regardless of whether the service is procured by hailing on street or pre-booking.

Metal dealers

• General support for proposals in light of problems, but concern about costs on small business and also about new rules making it difficult for people to get rid of small amounts of scrap metal (dealers won’t take things if costs of recording where it came from etc. are too high).

Public entertainment venues

• Support for local flexibility in licensing arrangements. Question about whether school plays covered?

Sexual entertainment venues

• Support for community consultation prior to sexual entertainment venue being established.
MSP Chair – Mark McDonald MSP  
Scribe – Allan Campbell

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

Community Planning Partnerships

- Overall, area committees of the CPP seem to work well in Dumfries and Galloway, and have good community input and representation from the local area. But, consultation by the local authority is seen as patchy. In particular, participants were unsure how (if at all) results of consultations fed into council decisions, and often they were seen as “tick-box” exercises. Linked to this, it was suggested that a lot could be learned from what had previously worked well locally, and that often there was no need to “reinvent the wheel”.

- There was a view that there needs to be more emphasis on how to empower communities, and to move more to public bodies working with communities – this would require culture change across the public sector. And, that having the right
to do something in legislation (like participation requests, asset transfer requests) was very different to being actually able to do something.

Marginalised Communities

- Following on from this, there was a detailed discussion of the opportunities for “marginalised” communities to take advantage of the powers in the Bill. Without resources and support, the group wondered whether the new powers could exacerbate inequalities, as those affluent communities could take advantage of many of the Bill’s opportunities while less affluent/able communities could possibly struggle. It was felt that there needed to be awareness-raising programmes on the Bill once in force, possibly on traditional/social media. Most important to helping marginalised communities use the powers was a clear, transparent process. Equally though, there needed to be management of expectations to go along with this, as it was recognised that not every project or request would be successful.

Community Councils

- Linked to this, there was some discussion of community councils, which while they were seen as generally working well, were very much populated by the “usual suspects”, often older, affluent people who were not representative of the population, although they tended to be very committed to the role.

Asset Transfer

- The group also talked about current difficulties with the community asset transfer process, including one case which had been going on for 15 months. There was a feeling that the current processes were not working well, and hope that the Bill could help. However, there was some recognition that councils need to be careful in disposing assets as communities could take on overly ambitious projects. There was a feeling that, in terms of assets, it was better for communities to take on buildings that only needed minor physical improvements, rather than those that needed significant, major improvements. It was also noted that, if councils do unload assets with too many complex issues on to community groups then councils should be prepared to take them back.

- The group also discussed the Sustrans project currently on-going in Dumfries town centre, and the positive impact of that project on the local community.

Public Body Budgeting

- The group moved on to discuss the impact of budget reductions on public services. It was recognised that councils had, while budgets were increasing, provided a wide range of non-statutory services that people had got used to and
now expected to continue. It was felt that there needed to be a more imaginative approach to budget allocations and that it was crucial that local people felt they could influence these decisions and that their voices would be heard. They also felt that council officers should recognise that they didn’t always have the right answer.

Common Good

- There was also a detailed discussion of common good in the area, and the progress that had recently been made by one individual in driving through reform of the way in which the council dealt with common good issues.

- This led on to a discussion of the importance of committed people who were able to drive change and deal with council departments. However, without this, local people often felt frustrated and lost in trying to find the right person to speak to at the council about an issue. It was felt that generally a single point of contact would be useful, and the group was attracted to the Dundee system.

- Finally, the group also touched on allotments, and were keen to note the positive impact of allotments on physical and mental wellbeing in the community.
MSP Chair: Cameron Buchanan MSP

Scribe: Claire Menzies-Smith

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows:

Asset transfers

- What is the position when an asset has been acquired but the membership of the body which acquired the asset dwindles – there should be some monitoring of the asset to ensure it is sustainable?

- There have been examples where a group has failed to ensure the viability of an asset and this has then been sold into private ownership for a nominal sum.

- It should be more transparent to the community which assets a public body holds. A publically available register would help in this respect.
- Needs to be dedicated support (named person) from the outset to those wishing to take over assets. Any person providing support should have sufficient knowledge. Had to speak to 17 people to get information on a single matter.

Community Planning Partnerships (CPPs)

- CPPs aren't the problem, it is engagement at local level. There is a disconnect with the middle management – they don’t know what is expected of them.
- Needs to be a commitment from the very top (Chief Executive/Council Leader) for community involvement in decision making.
- Insufficient resources could be a barrier to meaningful engagement.
- Better use of existing resources is the answer.
- Consultation is difficult; it always end up being same active members in the community or in other words the “perennials”.
- They are not engaging well, need to go to where people are e.g. supermarket, pubs.
- When consulting you have to manage the public’s expectations.
- Needs to be an outcome from any consultation and the outcome has to be communicated properly so that people understand why their views weren’t implemented.
- Council used to have monthly public forum meetings where people could put forward suggestions. Contributions were thoughtful and sensible. Now we have themed meetings so people cannot raise wider issues important to them.
- We want regular meetings where the public have an opportunity to address their councillors.
- Multi-member wards mitigate against local participation
- Community planning should be at local level and not strategic level.
- No easy explanation of how to engage with the council – meetings are publicised at the back of the paper in the public notices section – hard to find and not motivating.
Community participation

- Important to note that resource is not just about money, but people.
- “Need to find ways of keeping them fired up”.
- Apathy from the general public – “what’s the point it’s a fait accompli”.
- Activists need to be given support to provide peer support (possibly financial support to recompense for the time they spend away from their project).
- Take resources out of the council and into the community.
- Should be a duty on public bodies to provide support to participate
- Easy to engage primary schools, much harder to engage secondary pupils.
- Compared to the national volunteer rate of 29%, Dumfries has a higher volunteering rate – 36%.
- Number of small isolated communities who have to do things for themselves.
- Volunteering can’t be taken for granted need to be given help: skills; resources; training and information.

Participation requests

- Without a constitution the system could be open to abuse, particularly if the group is seeking funding for their activities.
- Could be argued that the community council should take forward any requests.
- The right to make a participation request has to be publicised and information provided in the simplest form possible.
- Shouldn’t need to be part of a group to make a participation request, as an individual - I should have a right to “lobby”.
- There should be an appeal process – there should be a right to respond.
- Any appeal process should be independent of the public body.

Community right to buy
• Clear information is needed on the buying of abandoned or neglected land – this could apply to some housing schemes.
MSP Chair – Stuart McMillan MSP

Scribe – Seán Wixted

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

Community Planning and Community Councils

- Considering the role of community councils, the Community Empowerment (Scotland) Bill (“the Bill”) doesn’t empower communities. If we want it to empower we should give Scottish Community Councils the same powers as English ones such as the power to raise their own money etc;

- On the reform of community planning in the Bill; there was concern that community councils are not really representative of their communities, in terms of age, gender, ethnic profile, social and employment status and minority groups;
There are too many community councils. For example there are over 150 in Dumfries and Galloway ("D&G") of which only about 87 are active. Most are very poorly attended by the councillors and public;

Part of the reason for this is that community council have such little power, no one is motivated to attend;

There was concern that D&G Council doesn’t consult with community councils when its undertaking work which affects their communities and which they get complains about;

The was a feeling community councils should focus on the major issues which affect their local communities such as care of the elderly, rural housing etc, not small village issues or parish pump politics;

There is a lack on knowledge by community councils about their power or duties and how they are exercised. They also have too few resources to do their current role;

One issue which hampers community councils is the fact that the media don’t address major policy issues which affect people (like care for the elderly, rural housing provision) in an accessible way. Instead they focus on small issues which are easy to report on, so that what is raised in the minds of the community and they focus on;

There is a need to give some consideration to the introduction of a minimum ratio/size of population to practically support a community council. Often they are made up of older retired people as they are either the only ones with the time, or are over represented in certain communities;

Another point was made about the fact that D&G may have the smallest ration of people to community councillors in Scotland this that many villages and communities in D&G are not covered by a community council at all;

Younger people are especially underrepresented on community councils;

The debate focusses too much on the structure of community councils and other bodies, when it should focus on how the community is engaged with;

More creative ways need to be used to engage by community councils and the community, but also this needs to include development trusts and 3rd sector groups;
• There was a strong feeling the community councils need to be rebranded for the 21st century to attract a more representative cross-section of the community they serve. As they stand just now most people don’t see the point of community councils;

• One suggestion to make community councils more relevant to their communities was to reorganise them around school and educational districts;

The 3rd sector

• The wider 3rd sector community must move away from being grant dependent on funding from the public sector and become more socially enterprising and independent by generating their own revenue. This is especially relevant in taking on assets from the public sector;

• There was a lot of concerns to whether the Bill can facilitate the structures needed for the development of a more socially enterprising 3rd sector community base;

Community Planning Partnerships

• Most of the participants in the discussion stated that they did not know what Community Planning Partnerships (“CPPs”) did or who was on them;

• Following a description of D&G CPP, who was one it and how it worked, there was agreement that is was especially under representative of young people. One suggestion was that local members of the Scottish Youth Parliament should automatically be members of their local CPPs;

• The group discussed several examples of issues around right to buy land that have affected communities in D&G, such as the ownership of the harbour in Port Patrick by an absentee landlord. Dalry Community Council recently worked to prevent the sale of a community allotment to a housing developer, and were successful in this;

Community Right to Buy

• On right to buy provisions of the Bill, there was strong agreement that the existing right to but legislation should be extended to urban Scotland and that the political and legislative focus for the last 15 years on this issue in ‘rural’ Scotland has been “quite unfair”;

• There was concern over the definitions set out in the Bill on abandoned and neglected land, vs. abandoned or neglected land. There was a view that the Bill
will to clearly define what constitutes ‘abandoned’ land and what constitutes ‘neglected’ land and in what instances either or both of these criteria must be met before the power of the Bill can be utilised;

- There was also a strong view that definitions of ‘abandoned’ and ‘neglected’ land must be on the face of the Bill, and not in regulations as this is the only to ensure the get the level of public and parliamentary scrutiny which will be required for such contentious concepts. It was felt that Government consultations on regulations get very little attention and scrutiny either buy the Parliament or by the public in general;

- Concerns were raised about the level of second/holiday home ownership in rural communities in Scotland and their impact not just on house process and access to the housing market for first time buyers, but also on the provision of key services in the community such as school places etc. Some felt that there should be thresholds defined as to the level of second home ownership allowed in a community before certain community provisions could be activated to ensure that the level of second home ownership doesn’t have a disproportionate impact on the community. One suggestion was to have second homes reclassified under the Used Classes Order of land use planning system as a way of addressing the problem. (The chair said the clerks would bring this issue to the attention of the RACCE Committee as they were examining Part 4 of the Bill);

Participation Requests

- On the participation requests aspects of the Bill there was an acknowledgment that the 2007 single interface decision was very welcome but that this development now needed to be built on;

- There was agreement that if the Bill make it easier for communities and people to navigate the complexity of the local government system in terms of getting decisions made, or identifying who to engage with, would be very welcome. One participant described their experience of engaging with a local authority in terms of getting a decision on a community project as “like wading through treacle”;

- There was a feeling that more needed to be done to ensure that communities and the 3rd sector has more resources to engage with much clearer lines of communication with the public services;
There was a hope expressed that participation requests may assist in bringing about the culture change which many of the community groups identified was necessary in the public service, and at local authority staff level in particular;

There was, however, also an acknowledgment that community groups and the 3rd sector also need to undertake culture change in terms of the way it engages with the public sector, and what it expects the public sector to achieve for them;

It was felt that community groups and the 3rd sector need clear understandable guidance to assist it in achieving culture change;

**Asset Transfers**

- On the asset transfers provisions of the Bill, there was an acknowledgment that local authorities are facing funding shortfalls and, as such, their ability to maintain and operate a host of buildings and other assets will be put under great strain;

- There was a concern that the asset transfer aspects of the Bill might be seen by some in local government of an opportunity to offload burdensome assets onto community groups and others, with all the negative implications that could have for such groups;

- Community council member outlined the current process they are engaged in in terms of trying to purchase a local community hall and summed up the experience as “painful”. Elaborating on this process one of the main issues was the continually shifting goalpost’s in the process. This was largely dependent on the succession of different council officers the community council has dealt. Some have presented contradictory information on the process of acquiring the hall, with ‘problems’ appearing and disappearing with the person in question.

- Also the estimated timescales for the process have expanded and contracted, again largely it would seem with the council officer in charge of the process. This overlying message was that the community council had to “fight all the time” to get anywhere;

**Local Authority Services and Culture**

- There was a clear acknowledgment from many in the group that there were many services and functions that D&G Council did very well. But in certain area, especially any area which have a commercial aspect to them, the processes of the council were described as “lethargic”;}
Having said this, however, the group did state that there was also a pressing onus on the 3rd sector and community groups to get their forms of governance and forward planning right in terms of taking on commercial entities and producing viable and sustainable plans for projects;

One participant described the cultural mind set in local government as a “disabling” one (e.g. what your group needs to do so as to allow this to happen is…. ) rather than an “enabling” one (e.g. we'll make this happen and just need to find a solution to…..);

It was felt that part of the reason for this was that council officials often see council assets as 'their' assets, perhaps on which the perceive they job depends. So those seeking to take over such assets are an inherent threat, or at least a risk to be managed;

There was a feeling that elected councillors on local authorities are often themselves disempowered in helping communities as they are dependent on the council bureaucracy for information and action to make things happen. And if the culture amongst the council officials is a hostile, stressed or disengaged one, the councillors can thwarted despite their best efforts;

Common Good Property

In relation to common good property there was a strong feeling that much more clarify was needed on public sector owned/managed buildings and land, and whether it is common good property or not;

There was universal agreement that a publically available common good register is vital to the success of the common good provisions of the Bill;

One issue which needs to be addresses in the culture of certain communities which see common good property in their locality as exclusively for the use of ‘their’ local community, as opposed to the whole community of a local authority area;

There was a strong feeling this was especially true in relation to the communities with access to assets which were inherited from the former Royal Burghs. Some of these assets were the subject of local debate as to ‘whose’ asset they were. The Bill needs to be clear that assets held by council for the common good are for the good of the entire community of the local authority in questions, not just a section of that community which may formerly have constituted a Royal Burgh;

Allotments
Finally, on allotments, there was a feeling that while the provision of allotments was an important function which local authorities should provide to the community, there was a wider need to ensure the entire community has access to the ability to grow their own food;

It was felt that this was especially important for vulnerable sections of the community, such as those of economically deprived backgrounds; people with health issues (such as mental health needs), immigrant and minority communities, people with disabilities and age-specific communities (such as young people or the elderly);

It was agreed that, in terms of the provision of allotments or land for growing food, local authorities should look to give priority to such groups in terms of providing access to growing land.
Chair:  David Cullum
Scribe:  Stuart Kay

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose.

The main points from the group’s discussion were as follows—

**Community Empowerment (Scotland) Bill**

Some communities are more able to participate than others.

- It is important to support communities to build capacity.
- Outcomes should be policed.
- Third sector interfaces have an important role in the process.
- Culture change is needed.
- There are five community councils in Dumfries, but how many of them are active?
- “Every community council has to come into the 21st century.”
- There has been more engagement in local politics since the referendum, which could represent a big change.
• East Ayrshire Council looked at engagement with communities two years ago (not doing things to or for them), and it has seen a change in people’s interest.
• It is important that community councils work together.
• In the arts, participation, venues, getting people engaged and artist-led rather than council-led initiatives are important.
• A concern about the bill is that bodies have to be incorporated. Perhaps its scope should be broader.
• The public sector must get into organisations.
• The council should have named persons in every community.
• There are problems with a lack of resources and “volunteer burnout”.
• Whether participation requests make a difference to communities will depend on councils listening. Councils can cherry pick what they want to do.
• Local authority budget consultation can be about where people would like them to cut less.
• Are participation requests registered? It would be interesting to know how many are successful.
• The bill should mean a cultural shift. A more open culture to learning and improvement is needed.
• There are three allotment sites in Dumfries. People are interested in allotments, and there is a lot of spare land. Allotments bring many community benefits, such as local produce and clean air.
• The importance of land being used for community projects, such as land art projects, was discussed, and the Summerhill land art project was referred to.
• The bill should reach more widely, beyond allotments. It is too restrictive. It is up to communities what they want to do with land.
• Burdens on local authorities should be reduced through meaningful and sustainable projects.
• People who live in the centres of towns need access to land, and there are plenty of gap sites.
• The difficulties of converting agricultural land, which could be used for the community, were discussed.
• On common good property, the point was made that consultation can be tokenistic, and there is the issue of accountability in large areas.
• The possibility of community councils vetoing local authority decisions was discussed.
• A register of who owns what is needed.
• Community councils are the most directly accountable bodies for communities.
• It is important to publicise proposals.
• Hard decisions are ahead, and everybody must work together.
• More open, efficient and streamlined common good processes are required.
• Councils have a duty of care for buildings.

**Air Weapons and Licensing (Scotland) Bill**
• It is estimated that there are half a million air weapons in Scotland.
• Respondents to the consultation tended to be those with an interest in opposing the proposals.
• Black cabs are expensive and are preferred in the NHS, for example. They have prestige and the service is skilled.
• In Edinburgh and Glasgow, black cab drivers must pass a knowledge test, but is that required?
• There are no wheelchair-accessible taxis in the area, which is a gap in the service.
• There are different taxi regimes across the country. The question whether there should be consistency was raised.
• Many cultural organisations in the area are not in traditional venues and there is a six-month turnaround for licences. Temporary and quick licences are needed.
• If six different events take place over a year—perhaps in the open air—it would be good to get an overarching licence for them.
• It is important to make Dumfries more vibrant by granting entertainment licences.
• A coherent approach to licensing is needed.
• In rural areas, many events go on “under the radar”. Processes should be as flexible, understandable and simple as possible.
• The question whether an entertainments licence should be attached to the venue or the organisation was raised.
Commumity Empowerment (Scotland) Bill

Note from the Clerk

1. On Friday 31 October 2014, the Scottish Parliament hosted the 2014 plenary of the Scottish Older Peoples Assembly (“SOPA”). During the day, delegates undertook a series of workshops and panel discussions, as well as meeting in plenary session.

2. One of the six workshop groups for the day focussed on the topic of community empowerment and the issues which are especially relevant to older people.

3. As the Local Government and Regeneration Committee is currently scrutinising the Community Empowerment (Scotland) Bill at Stage 1 (“the Bill”), the Clerk and Assistant Clerk to the Committee facilitated this workshop. This allowed discussion of the Bill and its relevance to older people.

4. Attached is a clerk’s note summarising the discussion in the workshop and the three key issues reported back to the plenary session from the group.

Seán Wixted
Assistant Clerk to the Committee
6 November 2014
SCOTTISH OLDER PERSONS ASSEMBLY
(“SOPA”)

FRIDAY 31 OCTOBER 2014

BREAKOUT GROUP – COMMITTEE ROOM 5

1.30pm – 2.30pm

THEME: COMMUNITY EMPOWERMENT

Chair – David Cullum (Clerk to the Local Government and Regeneration Committee)

Scribe – Seán Wixted (Assistant Clerk to the Local Government and Regeneration Committee)

Speaker – Donald McLeod, Highland Senior Citizens Network

Plenary reporter - Tim Puntis, LGBT Age and SOPA Board Member

Participants –
Parveen Haider         Milan (Senior Welfare Organisation) LTD
Michelle Harrity       Scottish Government
Helen Ford             
Carol-Anne Kennedy     Macmillan Cancer Support – Associate Macmillan Involvement Coordinator for the West of Scotland
Valerie Egdoll         Edinburgh Napier University
John Thompson          Gay Men’s Health
Deirdre Flanigan       Scottish Human Rights Commission
Joan Wilson            East Berwickshire U3A
Catherine Bishop       Senior People’s Forum
Marguerite King        3Ls University of Strathclyde
Sheena Wurthmann       
Katherine Brookfield   University of Edinburgh
Robyn Wardlaw          Scottish Social Services Council (SSSC)
Margaret Tait          Inverclyde Elderly Forum
Dave Davies            LGBT health and wellbeing
Margaret Mitchell      Dumfries and Galloway Seniors Forum
John Parkhill          3Ls Student Association at Strathclyde University
Margaret Edridge       Individual elderly woman
Samuel Gibson          Unite the Union affiliated to NPC
Barbara Barnes         Alzheimer Scotland
Kristofer Watt         ELREC
Summary

The group was required to report three key action points back to the SOPA plenary in the Debating Chamber after their discussion. The following were the action points reported on community empowerment—

**ACTION POINT 1** - ENGAGEMENT WITH THE COMMUNITY MUST BE CLEAR; IN A FORMAT PEOPLE CAN UNDERSTAND; ALLOW ENOUGH TIME FOR PEOPLE TO ENGAGE; AND HAVE MEANINGFUL ACTIONS WHICH ARE THEN REPORTED BACK TO THE COMMUNITY

**ACTION POINT 2** - THE SCOPE AND WIDTH OF THE OPPORTUNITIES PROVIDED BY THE COMMUNITY EMPOWERMENT BILL TO ALLOW COMMUNITIES TO EMPOWER THEMSELVES NEEDS TO BE CLEARLY COMMUNICATED TO ALL – ESPECIALLY THROUGH PARTICIPATION REQUESTS

**ACTION POINT 3** - WHILE RECOGNISING THAT THERE ARE MANY DIFFERENT KINDS OF COMMUNITIES – BOTH OF PLACE AND OF INTEREST – THE COMMUNITY EMPOWERMENT BILL MUST EXPlicitly RECOgnise COMMUNITIES OF AGE, SUCH AS OLDER PEOPLE, AND THE NEED TO EMPOWER THEM DIRECTLY.

NB – these notes are not intended to be an exhaustive account of every aspect of the group’s discussion, but are an attempt to capture the main points which arose. Summary of group discussion—

- Donald McLeod of the Highland Senior Citizens Network briefed the group on feedback from 12 SOPA engagement events conducted across Scotland between June and September this year. These meetings engaged with over 400 older people and discussed the issue of importance to them. It was noted that the second most frequent issue raised at these events was the subject of community empowerment, with 68 people raising the subject. SOPA participant’s
responses were grouped into three key areas of community empowerment (a) access; (b) mindfulness and (c) resources. A copy of the feedback summary from these events is attached in the Annex to this paper.

- The group discussed the difficulty official documents like consultations from national and local government pose for older people, being full of acronyms and “official speak”. Older peoples groups can only meet on monthly bases - or less frequently as resources are scares, and are staffed by volunteers. Often the timescales for public consultations for these groups to respond are too tight. They have to discuss a consultation, draw up a response, and agree to the submission, which may take three meetings, by which time the deadline for consultation has passed. There is also a strong view that officials pay only “lip service” to consulting older peoples groups and they never get feedback on their input.

- Another delegate said that older people find ‘official’ language very hard to understand and confusing.

- This view was also supported by another delegate who told the group official consultation documents are too long for volunteers to read and understand. Older people from minority groups, whose first language is not English, were especially disadvantaged in this regard.

- Government needs to look at ways people can respond to consultations other than in writing.

- One delegate was very confused by the acronym TTIP,\(^1\) which was referred to in plenary session and did not understand what this was. He pointed out that even at an SOPA meeting, ‘official speak’ was abundant and this turned people off.

- A delegate questioned how the Government and civil servants decide which groups to consult as he was unaware of ever having been consulted.

- Following a brief discussion on the public consultations on the Community Empowerment Bill (“the CE Bill”), a member of the Government’s Bill Team explained the two consultation processes held on the Bill (each 12 weeks in length). An easy read version of the Bill has not been produced.

\(^1\) TTIP is the Transatlantic Trade and Investment Partnership also known as the Transatlantic Free Trade Agreement (TAFTA). This is a proposed free trade agreement between the European Union and the United States which is currently under negotiation: [http://ec.europa.eu/trade/policy/in-focus/tpip/](http://ec.europa.eu/trade/policy/in-focus/tpip/)
• One representative of a group stated that community empowerment meant the people should have easy access to government, however she said her groups had been refused a direct meeting with a Scottish Government minister.2

• The Chair informed the group of the Local Government and Regeneration Committee’s scrutiny of the Community Empowerment Bill and the problem it has with “gobbledygook”;

• Another delegated stressed the need for community groups to have access to community education - especially older people in deprived areas. His local Further Education college has downgraded community education recently.

• A delegate said it was easy to arrange meetings with MPs, MSPs and councillors and they listen to concerns. But people never seem to get outcomes from these meetings and rarely get feedback on information on action.

• Liaison with public representatives and other public services, like GPs, the NHS, councils, is very hard for people who speak minority languages. Older people from these groups need careers with language skills to help with this.

• Another delegate told of the difficulty older members of the LGBT community have in engaging with public services, especially when so much of the engagement seems to be aimed at people who live in a community, rather than people from a social group. Because of the CE Bill didn’t seem to have much relevance to people from the LGBT community.

• Another delegate recognised the need for all communities (either of place or of interest/need) to be treated equally. However, given the breadth of need of older people across all parts of society, she felt that the CE Bill should specifically make reference to empowerment for older people. For example, certain cost-saving decisions by councils to services which may seem to have a minimal community impact, have a disproportions impact on older people (e.g. access to public/accessible toilets for care and hygiene needs, access to public seating and park benches for rest etc.).

• Also, another issue of concern was the need for access to space for socially activity older men, who are an especially isolated group (e.g. men’s shed movement etc.).

2 This issue was raised in the Q&A with Cabinet Secretary Robison during the plenary session. The Cabinet Secretary was unaware of the issue and apologies for any offence caused. She undertook to look into this issue.
The SG Bill team explained how the CE Bill could assist both older people in the LGBT community and older men (e.g. land/asset transfers for men’s sheds/meeting space etc.)

Concerns were expressed over the lack of a published Equality Impact Assessment on the CE Bill. The issue of age discrimination was discussed and the fact that since 2012 this has been a defined category under the Equality Act. However, age discrimination is still widespread in society, especially in healthcare/NHS/GPs etc. The CE Bill needs to facilitate more community-based supervision of ‘the professions’ such as surgeons, doctors etc. Also governing/regulating bodies like the General Medical Council need more community input.

There was discussion as to how the Government takes the view of many and condense them into one idea. How is the ‘minority’ voice included in the priorities of the majority.

There was a call for clear and highly visible guidance to ordinary people on how to use the powers in the CE Bill. The SG official stated this was being developed.

A delegate spoke about the difference between ‘engagement’ and ‘involvement’ when it comes to making decisions. The Government and Parliament may be good at engaging people, but not involving them. Devolution has now been around for 15 years, so it shouldn’t take a referendum to get this kind of improvement in the way the system works. Parliament and Government should be improving year-on-year on involving people in decision making.

One delegate asked if there would be a time limit on participation requests made under the CE Bill once it become law? A member of the CE Bill team explained that once the ‘outcome’ to which the participation requests relates has been achieved by the action in question, then the process would come to an end.

One delegate asked how individual people who are not members of a community or voluntary-based group could find out about such consultations and bills? If you don’t have access somehow, how can you know what’s going on?

It was stated that all people who are SOPA delegates and have email addresses could be informed of such development. SOPA would look at this.

Another delegate spoke of the public cynicism about engaging with officials and government, as often people don’t hear back on the input
given. How can this issue be addressed? It makes it harder for community activists to get people interested and involved when this cynicism is so widespread.

- One participant spoke of older people living in remote and rural areas, being especially isolated compared to those living in towns. Low levels of access and knowledge to the electronic world makes emails and e-literature useless to them. They need face to face engagement. The Scottish Government need to work with all 32 local councils on this issue and “up its game” on engaging with isolated people.

- One delegate asked why all 32 local councils didn’t have an Older Persons Champion (“OPC”) to coordinate all these efforts? Also all other public agencies should have an OPC.

- A delegate expressed fears that funding pressures and cultural resistance will means council will “find excuses” to knock back a participation request from community groups. The agreement that “we don’t have the funds for this” is impossible to argue against if a council says no. The delegate asked about what sanctions the CE Bill will have to stop councils using ‘lack of funds’ as an excuse to get rid of participation requests.

- Discussion was held about the need to have access to more allotments and the ability of people to grow their own food and plants. Reference was made to the example of the Growing Your Own Community initiative in West Lothian and being a good example.

The meeting concluded at 2.35pm
ANNEXE

Responses to the SOPA question: Community Empowerment
A summary of the highlighted points below.

This topic covers accountability of organisations, Government support, intergenerational work and the desire of many active older people for schemes to enable greater involvement as volunteers in sustainable projects. The latter would involve the reshaping of services. Inclusiveness and equal respect of all sectors and individuals within the older population is vital – for example, those in the Lesbian, Gay, Transsexual, Bisexual (LGBT) or ethnic communities who often remain hidden on the margins of society.

Access
- Financial support of older adults who wish to engage in further education

Mindset
- Use the life experience of older people to help younger people
- See the person as a unique individual, not solely defined by age
- Valuing seniors in the same way that younger people are valued
- Ensure that organisations representing the older population are accountable
- Fully and explicitly acknowledge the LGBT community and its older members
- Be treated with dignity and not as second class citizens
- Encourage rights and responsibilities for all as part of the Human Rights agenda

Resources
- Ensure the needs of people of all ages are met equally with no discriminating services
- Government support for community development and empowering older citizens

Examples of Propositions
(Different subject matter and wording can be easily substituted.)

SOPA welcomes the Scottish Parliament’s wish for the Assembly to contribute ideas towards the Community Empowerment (Scotland) Bill and asks that the Act will explicitly benefit the older population and that funds will be allocated to support the legislation’s implementation.

SOPA calls on the Minister for Pensioners’ Rights to ensure that the energy and engagement of older people at local level is harnessed through supporting good quality local news media. This is important in terms of democratic engagement in the community as it provides a key pathway to recruiting volunteers, supporting local campaigns and maintaining momentum.

SOPA requests that the Scottish Parliament ensures that the Community Empowerment Bill (Scotland) encompasses Human Rights and Equalities legislation to create a new standard of democracy in Scotland which embraces the older population.
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.
CONTENTS

EXECUTIVE SUMMARY .............................................................................................................................................. 4

BACKGROUND AND POLICY CONTEXT .......................................................................................................................... 5
  THE BILL AND THIS BRIEFING ........................................................................................................................................ 5
  LOCAL GOVERNMENT AND REGENERATION COMMITTEE SCRUTINY ................................................................. 5

PART 1: NATIONAL OUTCOMES ........................................................................................................................................ 6

PART 2: COMMUNITY PLANNING .................................................................................................................................. 7
  CURRENT FRAMEWORK .................................................................................................................................................. 7
  REFORM OF COMMUNITY PLANNING ............................................................................................................................. 7
    Christie Commission and other reports .......................................................................................................................... 7
    National Community Planning Group and the Statement of Ambition ......................................................................... 8
  PROPOSALS IN PART 2 OF THE BILL .............................................................................................................................. 8
    Defining community planning ........................................................................................................................................ 8
    Local outcomes improvement plan .............................................................................................................................. 9
    Participation of community bodies ............................................................................................................................. 9
    Duties on CPP partners, governance .......................................................................................................................... 10
  FINANCIAL IMPLICATIONS .......................................................................................................................................... 10

PART 3: PARTICIPATION REQUESTS ............................................................................................................................ 11
  BACKGROUND .............................................................................................................................................................. 11
  DEFINITIONS .................................................................................................................................................................. 11
  PARTICIPATION REQUESTS – PROCESS .......................................................................................................................... 12
  FINANCIAL IMPLICATIONS ........................................................................................................................................... 12

PART 4: COMMUNITY RIGHT TO BUY .......................................................................................................................... 13
  INTRODUCTION ............................................................................................................................................................ 13
  NATURE OF LAND IN WHICH INTEREST MAY BE REGISTERED .................................................................................. 14
  MEANING OF COMMUNITY .......................................................................................................................................... 14
  SECTIONS 29 – 47 ........................................................................................................................................................... 15
  COMMUNITY RIGHT TO BUY ABANDONED AND NEGLECTED LAND ................................................................. 17
  FINANCIAL IMPLICATIONS ........................................................................................................................................... 20

PART 5: ASSET TRANSFER REQUESTS ........................................................................................................................... 21
  BACKGROUND .............................................................................................................................................................. 21
  DEFINITIONS .................................................................................................................................................................. 21
  ASSET TRANSFER REQUESTS – PROCESS ....................................................................................................................... 21
  FINANCIAL IMPLICATIONS .......................................................................................................................................... 22

PART 6: COMMON GOOD PROPERTY .......................................................................................................................... 23
  BACKGROUND .............................................................................................................................................................. 23
  THE BILL ....................................................................................................................................................................... 24
  ISSUES .......................................................................................................................................................................... 25
  FINANCIAL IMPLICATIONS .......................................................................................................................................... 26

PART 7: ALLOTMENTS ..................................................................................................................................................... 26
  BACKGROUND .............................................................................................................................................................. 26
  CURRENT FRAMEWORK ................................................................................................................................................ 27
  PROPOSALS IN PART 7 OF THE BILL ............................................................................................................................ 27
    Definitions .................................................................................................................................................................. 27
    Provision of allotments and maintenance of waiting lists .......................................................................................... 27
    Allotment regulations, disposal, strategy and reporting ............................................................................................. 28
    Management of allotments and the rights of tenants ................................................................................................. 28
  FINANCIAL IMPLICATIONS .......................................................................................................................................... 29
PART 8: NON-DOMESTIC RATES ...........................................................................................................................29
SOURCES .............................................................................................................................................................30
RELATED BRIEFINGS ..............................................................................................................................................36
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
Scottish Environment Protection Agency
- fire service, Scottish Natural Heritage
- Scottish Sports Council
- Skills Development Scotland
- Regional Transport Partnerships
- Visit Scotland.

This is a wider range of public bodies than set out in the 2003 Act.

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.

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 legislation\(^1\)) 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.
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

---

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.”
> (para. 87)
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

---

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.

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 [Accessed 9 September 2014]


Hillhead Community Council (2014). *Community Empowerment (Scotland) Bill Consultation*
Available at: http://www.scotland.gov.uk/Resource/0044/00445452.pdf [Accessed 9 September 2014]

Land Reform (Scotland) Act (2003 asp 2). Available at:


Local Government and Regeneration Committee. (2014a). *Call for evidence on the Community Empowerment Bill*. Available at:

Local Government and Regeneration Committee. (2014b). *Community Empowerment (Scotland) Bill*. Available at:

Local Government and Regeneration Committee. (2014c). *Letter to Scottish Government on the Community Empowerment Bill*. Available at:


Renfrewshire Council (2014). *Community Empowerment (Scotland) Bill Consultation* Available at: http://www.scotland.gov.uk/Resource/0044/00445247.pdf [Accessed 9 September 2014]


RELATED BRIEFINGS

SB 11-52 The Commission on the Future Delivery of Public Services (456KB pdf)

Scottish Parliament Information Centre (SPICe) Briefings are compiled for the benefit of the Members of the Parliament and their personal staff. Authors are available to discuss the contents of these papers with MSPs and their staff who should contact Allan Campbell on extension 85459 or email allan.campbell@scottish.parliament.uk. Members of the public or external organisations may comment on this briefing by emailing us at SPICe@scottish.parliament.uk. However, researchers are unable to enter into personal discussion in relation to SPICe Briefing Papers. If you have any general questions about the work of the Parliament you can email the Parliament’s Public Information Service at sp.info@scottish.parliament.uk.

Every effort is made to ensure that the information contained in SPICe briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

Published by the Scottish Parliament Information Centre (SPICe), The Scottish Parliament, Edinburgh, EH99 1SP

www.scottish.parliament.uk
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

07 November 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 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. CPPPs 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.
Agenda Item 1  
12 November 2014

- 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.
Agenda Item 1
12 November 2014

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
Agenda Item 1

12 November 2014

LGR/S4/14/28/11

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
Agenda Item 1
12 November 2014

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
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 Councils 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.”