



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 12 November 2014

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**LOCAL GOVERNMENT AND REGENERATION COMMITTEE**  
**28<sup>th</sup> Meeting 2014, Session 4**

**CONVENER**

\*Kevin Stewart (Aberdeen Central) (SNP)

**DEPUTY CONVENER**

\*John Wilson (Central Scotland) (Ind)

**COMMITTEE MEMBERS**

\*Cameron Buchanan (Lothian) (Con)  
\*Mark McDonald (Aberdeen Donside) (SNP)  
\*Stuart McMillan (West Scotland) (SNP)  
\*Anne McTaggart (Glasgow) (Lab)  
\*Alex Rowley (Cowdenbeath) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Dr Amanda Fox (Scottish Government)  
Derek Mackay (Minister for Local Government and Planning)  
Alasdair McKinlay (Scottish Government)  
Jean Waddie (Scottish Government)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The Robert Burns Room (CR1)



# Scottish Parliament

## Local Government and Regeneration Committee

Wednesday 12 November 2014

*[The Convener opened the meeting at 09:31]*

### Community Empowerment (Scotland) Bill: Stage 1

**The Convener (Kevin Stewart):** Good morning and welcome to the 28th meeting in 2014 of the Local Government and Regeneration Committee. Everyone present is asked to switch off mobile phones and other pieces of electronic equipment as they affect the broadcasting system. Some committee members might consult tablets during the meeting because we provide meeting papers in a digital format.

Agenda item 1 is an oral evidence session on the Community Empowerment (Scotland) Bill. We have one panel of witnesses giving evidence this morning. I welcome Derek Mackay MSP, the Minister for Local Government and Planning, and from the Scottish Government Alasdair McKinlay, the head of community planning and community empowerment; Jean Waddie, the bill manager; and Dr Amanda Fox, the food and drink policy leader. Would you like to make any opening remarks, minister?

**The Minister for Local Government and Planning (Derek Mackay):** Yes, thank you, convener. It is helpful that the committee has endeavoured to be proactive in its research and study of the bill. I know that people appreciate that. Just this week, I was in Dumfries and heard about the committee's visit there. New ways of working are helpful in exploring the potential of the bill.

The bill creates new rights for community bodies and new duties on public authorities, providing a legal framework that will promote and encourage community empowerment and participation. Of course, there are differences between engagement, consultation, participation and community ownership and leadership. The new rights will empower communities through the use and ownership of land and buildings. Strengthened involvement and participation will be very healthy for democracy, too.

The bill cannot come a moment too soon, and people have an appetite to take it forward. It is also timely, given the referendum. We might disagree about what decision we sought from the referendum, but surely it is a further clarion call for

action and for people to be empowered and engaged in public services in their communities. I hope that the bill will help to create the conditions in which that enthusiasm and engagement can prosper.

**The Convener:** Thank you, minister. Would you like to comment on the Finance Committee's somewhat critical comments about the financial memorandum?

**Derek Mackay:** Of course. We understand and take very seriously the work of the Finance Committee—and this committee—in looking at the financial assumptions and the provision of best estimates for any piece of legislation. The committee will be well aware that it is difficult to quantify with a cash figure the cost of an empowering piece of legislation because there are so many variables. Those include who might come forward to make an asset transfer request; what the value of the property might be; what value it will be transferred at; how many people are involved and where; how the transfer happens; and the costs involved for each local authority. There is great variability, and I would rather not offer the committee a flawed figure. However, we have been able to showcase in evidence the nature and the wide range across the country of the costs of, for example, asset transfers and other matters.

The Parliament is expected to understand the potential cost of a bill, within which there are checks and balances. Any public authority, in considering the transfer of an asset, would have to consider the economic impact and the wider benefits of that transfer. As I said, we have endeavoured to give the best possible information. On this occasion, I simply agree with the Convention of Scottish Local Authorities that the bill will not be overly onerous on public sector finances.

On participation requests and how local authorities engage their communities, because they should be engaging anyway the bill will not add a particularly cumbersome new burden; rather, it will create consistency, remove barriers and strengthen people's rights. The infrastructure for engagement already exists.

We are not going to make up a figure, as a nicety, for something that we cannot quantify, but we have set out the type of costs that would be involved in an asset transfer.

I am happy to go on if the committee requires me to do so. The position on costs is not the result of a lack of effort or any difficulties with local authorities. Indeed, just yesterday I spoke to the relevant spokesperson about the bill. It is not a matter of conflict; it is simply a matter of our having put on the table the evidence on what the

costs may look like. It would not be appropriate to come up with a false figure—that would be misleading and would give communities the false impression that we have set a floor, a ceiling or an arbitrary target. We are not doing that. The bill is about empowerment; it is not an accountancy exercise. We believe that we have fulfilled the requirements placed on us by the Finance Committee, but it is quite right that you are probing me further on what costs may be involved and what ramifications the bill may have.

**The Convener:** A few years ago, there was great concern about the implementation of freedom of information legislation and how that would affect local authorities financially, but it transpired that the legislation was not as onerous as was originally thought. Was any analysis done when the FOI legislation had been passed to look at those differences? Is something similar likely to happen with participation requests?

**Derek Mackay:** Although the freedom of information legislation brought about some pressures, that was proportionate and public authorities were able to deny requests that were too costly. That legislation has generated extra costs to the public sector, but the Community Empowerment (Scotland) Bill is about encouraging best practice. It will focus public servants' minds in considering how they engage communities in the decisions that they make and, when requests to be involved are made, that involvement will be proportionate. Some may argue that that will be too costly, that the decision makers should be left to get on with it and that they should not engage. However, that is entirely not in the spirit of the legislation, the guidance on good consultation or community planning partnerships and what should be being done already. Indeed, the Accounts Commission has said that there should be greater involvement of communities.

To put the situation into context, cost would be both reasonable and proportionate, but there would be on-going monitoring of all parts of the public sector, including local authorities, and their engagement by the Scottish Government. I am sure that, if the bill had a financial impact that raised concerns, we would monitor that. Local authorities have a duty to balance their books as well as to understand the strength of their assets. Let us say that the bill was so successful and so empowering that many groups across the country came forward to acquire assets, to take on new land and so on. If that happened, local authorities and the Scottish Government would have to consider that and look at the financial consequences.

As I say, the cost will be reasonable and proportionate, and it will remain under review. I do not think that there will be a rush to purchase

assets, resulting in values being wiped off the public sector's asset register or what is on the books, but there will be far better engagement and more asset transfers. If you asked us what success would look like, we would say more community ownership and more transfers. The bill should encourage that to happen in a way that is mindful of our wider financial responsibilities. However, it should be borne in mind that, in some transfers, better involvement and better prevention will also result in financial savings, albeit that those savings will be equally difficult to quantify. If we are serious about the preventative approach, we need to recognise that there are possible financial gains as well as some potential losses to the public sector with regard to the value of assets.

The bureaucracy—the cost of servicing the process—could easily be subsumed. Take the common good requirements, for example. The Chartered Institute of Public Finance and Accountancy already requests that the register—the understanding of assets as they relate to common good—be kept separate from mainstream council funding. Therefore, it should not be too onerous to produce a register of what is in the common good fund and what those assets are.

The question is then about how we engage with communities. If the public sector engaged more collaboratively—through community planning partnerships, for example—it could remove some of the costs of duplicating the consultation by consulting just once, properly and more effectively.

**The Convener:** That is very useful, and it is good to have your assurance that the situation will be monitored. The list of the assets that have been transferred in Dumfries and Galloway, for example, is quite extensive thus far, and it would be interesting to hear from the local authorities whether some of the assets that have been transferred were really assets or were actually liabilities on their books. I am glad to hear that you will continue to monitor the situation, as will we.

**Cameron Buchanan (Lothian) (Con):** Good morning, minister. The Finance Committee report states that

“best estimates have not been ... provided.”

Should there not be some sort of estimate of cost? I heard what you said, but there should be some costing in the financial memorandum. In two paragraphs in its report, the Finance Committee was pretty critical of the lack of estimates.

**Derek Mackay:** I understand the rules of the Parliament, and I understand the desire of the Finance Committee to have a full understanding of cost. If Mr Buchanan and this committee want me to make up a figure I will do that, but it would be

utterly flawed. It would send the wrong message on what the bill is about to provide floor or ceiling targets.

It is fairly easy for local authorities to produce a figure for how much it costs an official to do something—that is quantifiable. What is not quantifiable are the community engagement and empowerment that the bill will release, which groups will come forward to acquire public sector assets and from where those assets will come and at what value. Those things are impossible to predict. We could make up a figure as an accountancy nicety, but it would be utterly misleading because it would be a figure for the sake of having a figure.

We believe that we have provided the best estimates in that we can show that the costs of the bureaucracy arising from the bill can be absorbed. In COSLA's words, they are not "overly onerous"—and I can tell you, from negotiating with COSLA, that if it thought that those costs were overly onerous it would say so, and if it thought that there were substantial new costs it would state that.

We will continue our negotiations with COSLA, of course. However, we believe that, by setting out what we have set out in relation to current practice, current asset transfers and the type of burdens that would be added to public authorities, we have provided the most reasonable estimate of the cost that we can provide. It is not possible to say that the bill will cost a figure in a range between A and B because we cannot predict what the demand from the community will be, but we will continue to monitor the situation. That is not about a lack of effort; it is about the falseness of providing an arbitrary figure. I would rather not mislead Parliament or the committee by fabricating a figure.

**Cameron Buchanan:** I do not think that you are being accused of a lack of effort; it is just that the Finance Committee needs some sort of estimate of before-and-after and top-and-bottom costs.

**Derek Mackay:** I understand why you may wish to have such an estimate. However, if I said that our prediction was that a certain number of groups would come forward at a certain level to engage in transfers to a value of £10 million and that that was the value of assets that communities may want to transfer, it would be a completely false figure because no one knows what will happen.

The bill unlocks the potential locally to have asset transfers, more participation requests and a greater understanding of common good. It is easier to quantify the bureaucracy involved in servicing the machine—the state—and understanding asset registers, but we cannot predict, in all reasonableness, which communities

will come forward to acquire what assets at what value.

09:45

Of course, the committee will want to be reassured that the bill will not wipe off the capital assets of the public sector in one fell swoop. That would be incredibly empowering but not particularly affordable. That affordability, that public benefit test and those checks and balances are built into every asset transfer decision as well as the wider considerations of local authorities and, indeed, all public authorities—we are mindful that this goes beyond local councils into all parts of the public sector—to ensure that they deal with requests and make decisions in view of their financial outlook and the assets that they hold.

Again, I say to the committee that if it were to recommend that a figure be produced for its own sake I could do that but it would be utterly false, and I therefore encourage members not to do so. It is not for me to ask you not to do something, but it would be more credible if I provided an analysis of the asset transfers that were happening across the country and how public finances looked as a consequence of the bill and then took any necessary action. That is what we and the public authorities would do anyway. Any figure that we would produce would contain too many variables for it to be credible.

**The Convener:** As you know, minister, the committee continues to look at things after the event, and I think that we would monitor the situation.

Do you have another question, Cameron?

**Cameron Buchanan:** I am okay, convener.

**The Convener:** I want to stick with the financial situation at the moment. Anne, is your question about finance?

**Anne McTaggart (Glasgow) (Lab):** Yes, convener. It is just a wee supplementary.

**The Convener:** On you go.

**Anne McTaggart:** Good morning, minister. I have loads of other questions, but I will ask them later. I have listened to everything that you have said so far, but I seek some reassurance on allotments. Councils are worried about what is contained in the financial memorandum about the requirement to meet the duty to provide additional allotments. What words of wisdom, advice and reassurance can you give them in that respect?

**Derek Mackay:** I am not sure that I can offer local authorities any words of wisdom, but I can try to offer them some words of reassurance. The bill updates and simplifies what was there before, and the new trigger point with regard to the demand for

and provision of allotments contains a reasonableness test—in other words, councils must take all reasonable steps to satisfy demand. We are not talking about some absolute trigger point whereby, when a certain level is reached, allotments must be produced within said time in said place for said people, because that would take away from the flexibility of local authorities to adapt to circumstances. It is about taking all reasonable steps to meet the demand.

We are also being quite flexible in leaving it to local authorities to decide the size and nature of allotments. We are not being too prescriptive. As I have said, much of the bill only simplifies the legislation that was already there. I hope that local authorities will be reassured that the bill will not place a huge new burden on them, but it will certainly move things along more proactive lines.

**Anne McTaggart:** I welcome those comments, but can you give reassurance to allotmenters, who are concerned that local government might halve, quarter or otherwise reduce the size of allotments in order to meet its duties and requirements? Some people think that that is fine and only fair dos; in fact, they want that to happen because they want smaller allotments. Would it not be easy for local authorities to halve or quarter the size of allotments to get the figures they need in order to fulfil their duties?

**Derek Mackay:** That is a fair point. Anne McTaggart is skilfully playing both sides of the same argument to ensure that I get a complete grilling.

**The Convener:** I also like the word “allotmenters”. We might use that from now on.

**Derek Mackay:** Incidentally, those with an interest in allotments should not be confused with the growing lobby. My officials have advised me—for my own protection—that they are two different sets of enthusiasts.

As I have said, Anne McTaggart makes a fair point. However, the spirit of the legislation is that the trigger point encourages a local authority to meet demand, which might simply be for a space to grow things in, not necessarily for an allotment of a set size. We want local authorities to be able to define that for themselves. It would send the wrong message about empowerment and localism if I determined everything centrally in Edinburgh, including the size of an allotment, when, for good reason, local variations might be required in relation to things such as the size and nature of a site or the size of allotment that local people want. People have different needs and demands, and it might be that not everyone would want a full-scale allotment with all the work that goes along with it.

I would like to put a bit of faith in local authorities, which would generally try to meet

demand and get the size of allotments and spaces that would be required for communities in view of the circumstances. If established allotments are in place, I do not think that the council would try to reduce the size of them to meet the need, as that would be changing what people had already. The provision will be about new sites. My experience over the past few years, not just as a minister but as a constituency member and, before that, as a ward councillor, is that some people will want a full-scale allotment on which to do a variety of things and other people will just want some space in which to grow some basic vegetables. People's needs are different. If councils did go down the road of being so minimalist and meagre in their approach—I do not think that they will—we would have powers under the bill to prescribe the size of allotments, if necessary.

**Anne McTaggart:** Thank you, minister.

**Alex Rowley (Cowdenbeath) (Lab):** As a keen allotment grower, I would not disagree with what the minister had to say. However, I would say that if we are serious about driving the agenda of people growing food for health, wellbeing and fitness reasons, that will have a resource implication. This part of the questioning is about resources.

East Lothian Council states:

“Local government will incur extra cost as a result of these provisions ... 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.”

I suppose that that is the Finance Committee's concern. In its submission, Glasgow City Council states that it will be

“challenging to meet these costs from existing resources.”

Inverclyde Council, North Ayrshire Council and North Lanarkshire Council all say that they believe that the bill will have significant financial implications.

I get what you say about not being able to quantify the costs, but do you intend to ensure that any costs that come through as a result of the bill will be in the settlement?

**Derek Mackay:** Yes. It has been custom and practice with this Scottish Government that if we place a new burden on local authorities, we will fund that burden. As Mr Rowley well knows, the figure that we arrive at is a matter of negotiation with COSLA and local government. On-going monitoring will assist us. It has been the case that if, as a consequence of the Government's work, a burden is imposed on local authorities, we fund that. That is the commitment, bearing in mind of course that the provisions of the bill extend beyond local authorities. Allotments are specific to

local authorities, but participation requests, asset transfer requests and the wider duties in community planning extend beyond local authorities, so there will be costs to Government and Government agencies, such as health, police, justice and other departments that have not necessarily had the same exposure to that level of community engagement, or to participation and asset transfer requests.

What we are trying to do is to empower local communities through participation, public ownership and community-led regeneration. There will be a cost to various parts of the public sector. We will continue to discuss that with local authorities. It would be remiss of me not to make the main, general point about finance in Scotland, which is that roughly two thirds of the Government's block grant goes to health and local government and one third goes to everything else. Within that, the budget will increase in terms of grant support to local authorities from £10.6 billion to £10.8 billion, which is a cash increase. Of course, new responsibilities go along with that, but the budget protection that we have been able to provide to local authorities—proportionate as it is—compares very well with what has happened south of the border.

We see the transfer of assets not as a disposing of liabilities to communities but as something that empowers them. That will come at a price, and we will continue to discuss with local authorities and all parts of the public sector how it may affect them.

**Alex Rowley:** From the evidence that the committee has taken and the evidence from my area, the loss of capital assets is not the issue. In Fife, where the new administration has been doing a major review for the past two and a half years, the council has been quite happy for community organisations to take over buildings. It is actually trying to get rid of a load of buildings and to pull services together in one building. For example, in my constituency, three or four council buildings are being pulled into one and a new community centre is being built as a result. A lot of that has been successful—in Wellwood, for example, the local churches have taken over a building and are running it as a community facility. That is being encouraged. However, what has come up in the context of the bill is the issue of allotments, for which resourcing is needed if a serious strategy is to be rolled out.

Another issue that has come up continually in the evidence that we have taken is the capacity that exists in communities. We say that the purpose of the bill is to empower communities, but when we look at areas of high social deprivation, often the capacity is not there. One exception is Dundee, where we have heard that some

excellent work is being done on community capacity building and community organisation. In many communities, however, concerns are being expressed about whether sufficient capacity exists in those communities, where the support to build capacity will come from and how it will be resourced.

**Derek Mackay:** Those are all fair points. One of the motivating factors of the bill is revealed by what Mr Rowley says. He describes an asset transfer approach that many local authorities are currently undertaking, some of them quite successfully. That goes to show that allowing the community to have access to buildings that are—let us face it—sometimes underused or unused does not involve a huge financial burden. If a building is sitting empty, 90 per cent of the non-domestic rate is probably being paid, thanks to the changes that I made through the Local Government Finance (Unoccupied Properties etc) (Scotland) Act 2012. If a community group were to take over the building and it received charitable relief, it would probably pay nothing. That is an example of how better use of buildings can sometimes save money.

Mr Rowley said that some authorities are getting rid of a load of buildings. I know what he meant, but that is part of the problem. The local authorities choose what they want to dispose of, instead of the community being able to say, "We could do better with that." I am sure that I have said in previous evidence that, when I was a council leader, I took the approach that the council and I would decide what was to be transferred and the nature of it, rather than the community being able to request a transfer in a way that was proportionate, fair and reasonable. That is where the bill can make a big difference.

Mr Rowley is right. Co-location is absolutely the way forward in our public service reform agenda. As far as capacity and support are concerned, the billions of pounds that are in the system should be aligned to support that agenda. Community planning partnerships should be made to work to have a full plan for place—that is a requirement at the moment. We must genuinely share out the planning of resources and assets, which requires a recalibration of some of the bureaucratic support that is there now.

On Government funding, even in these times of austerity and financial reduction, we propose an increase in the relevant budgets. I will give some examples. We are recommending an increase from £7.9 million this year to £9.4 million in 2015-16 for the people in communities fund, which is for community-led regeneration work. We have allocated an additional £900,000 over three years to the community ownership support service, which will support people on the ground who are

taking on land and buildings and helping to develop their communities.

Specifically on capacity, through a £3 million strengthening communities programme, we will support 150 community-led organisations to build their capacity. That will have a great multiplier effect at local level. On the right to buy and community land ownership, we are increasing the Scottish land fund budget by another £3 million on top of the £6 million for 2015-16 to show that there will be more financial support for community ownership of land. That is just what the Scottish Government is providing as well as the budget increase—admittedly, it is a cash-terms increase—to local authorities. We are also making other public authorities aware of their duties in this regard. That is why we have rewritten the much-read Scottish public finance manual to reflect the nature of community transfers, asset disposal and other priorities.

It is fair to say that we need to expand our communities' capacity, but we need to make the approach more consistent and to build in legislative provision to tackle inequality. In the guidance, we are very mindful of the inequalities that exist and of the fact that there is not a level playing field. If we legislate for asset transfer without added support, the better-off communities will acquire the better facilities and the less well-off communities will not have the skills, support and professionals to make best use of the legislation. That is why we are tooling up groups that will support the agenda nationally and locally.

However, I agree that we have to ensure that all parts of the public sector consider the bill and, to make it even more powerful, the support that they provide to communities.

10:00

**Alex Rowley:** I noticed that Lesley Riddoch described the bill as toothless and said that it was a missed opportunity. When we talk about communities, we could be talking about villages, towns or neighbourhoods. Indeed, it has been pointed out in evidence that we could be talking about other sorts of communities.

How far does the bill go in empowering communities? I think that it makes no more than a mention of community councils. In my constituency, three or four community councils are having elections for the first time in some 20 years. Why would people stand for election to a body that has no powers? Are we satisfied that having 32 local authorities is empowering for communities? Should we not be much bolder and consider putting real resources into community councils or similar bodies? Should we not consider something on community plans that communities

draw up for the types of services that they can expect?

Is the bill bold enough? Should we not go much further if we are serious about empowering communities to be able to take charge of their services and the environments in which they operate?

**Derek Mackay:** I disagree absolutely that the bill is toothless. From the evidence that the committee has received and that I have received through, for instance, the reference group, the bill is broadly welcomed. When people are asked specifically whether it will make a difference, the answer is almost universally that it will. I think that it will, but I am not removing the democratic authority of locally elected members who, like the Government and the Parliament, have a mandate.

We could go further in disempowering local authorities and transferring more to communities and we will see whether such amendments are proposed. However, the bill is about swinging the balance of power towards communities. It does that through participation requests, which will empower groups and communities to initiate decisions and consultations that affect them on their terms. It also does it through asset transfers and extending community ownership to urban Scotland and making it more flexible. It does it by introducing compulsion where there is no willing seller of abandoned and neglected land.

There are a range of provisions that will be empowering for local communities, especially given how we have defined communities in the bill. I take heart from the evidence that the committee has received that it will make a difference to people's lives.

I have said to Opposition spokespeople and the groups with which I have engaged that if they want to toughen up the bill through further amendments and to do things differently, I am all ears. That is why, as the bill has gone on, we have built in a presumption in favour of transfer to the community that was not there at the start. That presumption is very important. We are not changing who gets to make the decisions on, for example, asset transfers, but we are absolutely changing how the decisions are made and where the balance of power lies. We are strengthening the hand of communities by doing that, in terms of participation requests and new rights to initiate that dialogue.

Alex Rowley is right. If we were to design local authorities today, we would not design them to be the way that they are now—I am sorry, Mr Buchanan, but the 32 councils are a consequence of Tory gerrymandering. If we tried to reorder local authorities' structures at this point, I would be concerned that it would consume our energy and

we would end up in boundary disputes and court battles. It would be a bit of a power struggle, with people vying for senior jobs in the new organisations. Instead, we should focus on outcomes, which, in essence, is what the bill and the wider work of Government are trying to do. We have been encouraging people to work across boundaries—geographic, institutional and organisational—to focus on those outcomes, which is why we do not propose any changes to the number of local authorities or their boundaries. However, we expect new ways of working.

That takes me to Alex Rowley's final point on accountability, on which I agree with him. Community planning partnerships and all parts of the public sector must be accountable through community planning. The committee has heard evidence on the accountability of community planning partnerships, as have I, and Audit Scotland has made statements on the issue—indeed, I met Audit Scotland recently to discuss it. Even if we establish an equal duty to contribute to CPPs, we must still do more about their accountability. There is an issue about who holds CPPs to account other than just the audit agencies. How can communities hold CPPs to account? How can they access that? If Alex Rowley wants to pursue that, I am happy to give consideration to how we can produce a stage 2 amendment to strengthen the accountability of CPPs to their communities. That is a very fair point.

However, I disagree utterly that the bill is not empowering: it is. We are not trying to empower people in a patronising way, by suggesting that they are not living their lives properly. We are removing barriers, creating consistency and giving people access to resources that are, in essence, already theirs through public ownership. That is empowering and it builds on the momentum that we have experienced this year.

If Alex Rowley wants to lodge amendments that would make the bill stronger or radical, I would happily consider them. That is the challenge that I have put to other commentators who may have views on what we should do.

Paul Wheelhouse has made it clear that, in response to the land reform review group, the Government will set out a timetable that includes a land reform bill, which will capture some elements of land reform and other areas. I do not want to impede the Community Empowerment (Scotland) Bill's ability to get on with what we have committed to do.

**John Wilson (Central Scotland) (Ind):** Good morning, minister. I go back to the financial memorandum and the fears that COSLA has expressed about additional costs that local authorities might incur. Has the minister

considered discussing with his ministerial colleagues some of the financial benefits that might be accrued as a result of the community asset transfer proposals, particularly in terms of health and wellbeing, the economic and employment opportunities that may be created in communities, and the benefits that will accrue to health boards and other Government agencies that are currently spending money to tackle issues such as obesity? If we are asking communities to be responsible when drawing up business plans and looking at financial sustainability, surely we should ask other agencies to indicate what benefits could accrue to their budgets as a result of asset transfers to communities. It should not be a one-way street.

**Derek Mackay:** Mr Wilson makes the very fair point that some benefits will derive from the bill and the actions around it that are not yet quantifiable; indeed, they may never be quantifiable. The importance of the prevention agenda is front and centre in the minds of all ministers and in the Government's approach, and it is a key pillar of our response to the Christie commission on public service reform. On the point about wellbeing and health more widely, part 1 of the bill is about national outcomes for Scotland and embedding the Scotland performs approach in legislation. The Government will have to consult on and produce the outcomes, and there will be that outcomes focus going forward. That approach goes way beyond gross domestic product or economic growth; it is about a wider understanding of wellbeing.

To relate that to projects on the ground, one of the first projects that I visited was Lambhill Stables in Glasgow, which has a great community base and great community activity, with a range of organisations meeting at the site. There is some allotment space and growing space and a nice community garden. The organisation wanted to expand into a piece of land but, "Computer says no,"—the council said no, if my memory serves me correctly. There was no reason why it could not expand and no understanding of that. The bill will put in place a process for that organisation to request a transfer, with a presumption in favour of transfer. That would be a transparent process and, crucially, there would be an appeals mechanism if the answer was still no, so the council would have to produce solid grounds for a no.

I use that project in Glasgow as an example because it is the kind of project that provides benefits by encouraging more active lifestyles. If the organisation had access to the land, that would expand the options available to it. It is a great example of a project that encourages wider health and wellbeing and getting out in the environment, so we should encourage the facility to expand its resources.

That was one organisation that was key in convincing me that the bill is the right thing to do. The organisation understands how the bill could make a difference to its agenda and objectives—the connection is well made. The Government is focused on the wider measurement of wellbeing and the preventative approach, and we want to allow communities to lead for themselves the kind of projects that will make a difference.

When I was a council leader, I represented Ferguslie Park. I found that the best champions for life-changing actions were sometimes not the social workers or council-employed development workers, as worthy as they are, but the community champions who lead and deliver the projects. Let us free them up to do more of the good work that they do rather than have them mired in bureaucracy and refusals from the state. The point is well made.

**Mark McDonald (Aberdeen Donside) (SNP):** I want to touch on a few areas, if possible.

In response to Alex Rowley, the minister referred to the difficulties that some communities might have in taking advantage of the bill. I am thinking particularly about deprived communities, where there are undoubtedly a lot of active groups and organisations, but they perhaps do not have some of the skills that are required, for example, on drafting business plans. At our evidence session in Dumfries, some local authorities said that they would be reluctant to assist groups in that process, because of potential conflicts of interest. How can we ensure that support is provided so that we do not find that communities that have the required skills base take advantage of the bill while other communities are left behind?

**Derek Mackay:** I have to say, in all reasonableness, that it sounds like an excuse to me if a local authority thinks that it cannot support a community group in compiling a solid and robust business plan for the benefit of a community that leads to an asset transfer. Conflicts of interests arise when a local authority could be compromised, but I see no reason why a local authority cannot support local groups to produce such a case. Local authorities and other public sector authorities might frustrate community groups by not providing the information that is required, which is why there will be a requirement in legislation to produce the information that is needed to understand the nature of the assets and buildings.

If we need to produce guidance to inform local authorities of their responsibility on the matter, we will do that. If local authorities or other organisations that Government supports cannot support community groups in building the business case for transfer, who will? I think that the local

authorities are more at liberty to do that than they suggested to you.

10:15

**Mark McDonald:** Let us move on to the role—or otherwise—of community councils and community planning partnerships. Both have statutory functions and underpinnings, but there is a view abroad that they are often not representative of the communities that they serve. Some deprived communities find it difficult to be involved in community planning partnerships, and some community councils cover geographical communities that are not represented by anybody on those community councils. Are you concerned that those groups with that statutory underpinning may be looked on more favourably or be given more support than groups and community organisations that do not have that backing?

**Derek Mackay:** It is correct to say that community councils have a statutory function. They are statutory consultees in the planning process and go-to organisations for most local authorities and other organisations that are seeking the opinion of local communities. However, it is also fair to say—this relates to Alex Rowley's point about the variability of community councils—that, although some are very good and provide services or run things, others are more mid range, some are talking shops and some are, frankly, barely legitimate. That is why we will not pick one group over another as a key community anchor organisation and say that that group is more important than another. The situation will differ from one community to another. The key organisation might be the housing association, the community council or the parent and toddler group. A range of community-led organisations is carrying out a range of work.

Under their statutory responsibility, community councils have to abide by the regulations. Nevertheless, we must improve the health and vibrancy of our community councils, which is why we continue to work with the Improvement Service and COSLA to support them. It would be wrong to say that the bill does not touch on community councils—it does. For example, when disposal or change of common good assets is being considered, there should be consultation with community councils. There is some reference to community councils. However, their performance continues to be variable across the country.

It is telling that, in this year of empowerment and engagement, irrespective of how we might have voted in the referendum, so many people registered to vote, voted and are now involved in political parties. I would like to think that we can harness some of that energy for community action and activism as well, although that may not involve

community councils. The committee will remember that, before the referendum, I launched a consultation on turnout in elections, and look what it achieved in the referendum. In all seriousness, it was not about how easy it is to vote, where people vote or on which day elections are held; it was about whether the subject of an election or, indeed, the referendum is meaningful enough to motivate people to vote—and, in the case of the referendum, it was. Is the business of community councils meaningful enough to motivate people to participate in it? That is the question.

I do not propose a transfer of powers from local authorities to community councils, but by unlocking the potential of communities through the bill we can allow a range of groups to come forward to participate in the process, initiate dialogue or consultation, challenge the running of a service or take over assets and property for the benefit of a local community. All that will assist, but—you are right—I am not being prescriptive about community councils. No action plan has been presented to me that proposes to shift the power radically towards community councils. I am sorry to say that, were I to do that, the general competence of many community councils would have to improve drastically.

**Mark McDonald:** I appreciate that point. The committee has received evidence from Scottish Enterprise that it does not currently set locally based targets for community planning partnerships or share resources with them. Are you concerned that Scottish Enterprise may not be fulfilling its duties as a CPP partner under the terms of the bill?

**Derek Mackay:** No, I am not. To reassure myself further about that, I met Scottish Enterprise just a few weeks ago. The Scottish Government has a location director—a very senior civil service official who represents the Government and supports the agenda—at every community planning partnership. Every area also has a Scottish Enterprise location director who is employed at a very senior level within Scottish Enterprise.

Mr McDonald makes a fair point. Scottish Enterprise does not commit specific budgets or targets at the most local level, although some community planning partnerships, through their single outcome agreements, have targets on economic growth. Some councils have set out how many organisations they aspire to have account managed by Scottish Enterprise.

I can guarantee to Mr McDonald and to the committee that Scottish Enterprise is very mindful of our obligations on community planning, as was reinforced during my recent visit. Lena Wilson, the chief executive, is very clear that, although Scottish Enterprise might not be bringing its

budget to the table, it should be bringing its expertise, support, networks and contacts to the table. That is the kind of support that a community planning partnership would want.

The bill deals with what is agreed at community planning partnership level. Scottish Enterprise can bring its business expertise. Economy is one of the key themes in community planning, and Scottish Enterprise is of course well placed in that regard. I hope that that reassures the member. Scottish Enterprise's functions and remit are very clear. Its growth areas are equally clear.

Sometimes, town centres—a very important part of my portfolio—can be pressure points for community planning partnerships or indeed for councils. Scottish Enterprise would not ordinarily associate itself with that, but that is not to say that business support and contacts cannot be provided, or that the right connections to support that agenda at the most local level cannot be made.

I believe that Scottish Enterprise will be far more engaged with community planning partnerships than it was before. To assist with that, the chief executive of Scottish Enterprise now sits on the national community planning group.

**Mark McDonald:** On the issue around participation requests and asset transfers, we heard evidence in Dumfries about local difficulties with the timescales for asset transfers. Whether they are provided for under the bill or in the guidance, should reasonable timescales be established for those processes? For many community groups and organisations, the funding to which they have access is often time limited. If a local authority drags its heels, the funding that groups have acquired can be lost.

**The Convener:** I will give you some examples of that, minister. At our evidence session in Dumfries, two of the local authority representatives stated that they hoped to have proposals in front of elected members within six months. Dumfries and Galloway Council hoped to have things done within 18 months, and it seems that the council has not kept to that in at least one case, which we are now involved in. Mr McDonald said that there should be a general rule about how long those processes should take.

**Derek Mackay:** Mr McDonald is right to identify that point. There is some provision in the bill around timescales. Orders could be made regarding specific timescales. Is that correct, Jean?

**Jean Waddie (Scottish Government):** Yes.

**Derek Mackay:** We do not wish to create an overly bureaucratic process that sets arbitrary deadlines. However, that might be required, with

responsibility sometimes lying with the planning system. An applicant can make a challenge if they think that the planning authority is taking too long. In essence, they can go for a decision to be taken elsewhere—by ministers, through an appeal.

We can consider the timescales issue more closely, but I would rather that authorities acted in good faith and considered and responded timeously to any requests that are made of them. I would be slightly fearful if an arbitrary timescale were set whereby they might simply say no. Fortunately, however, because of the provisions in the bill and the presumption, there would be an appeals mechanism that would ensure that the organisation would be heard.

I am happy to give more consideration to the matter of timescales if, given the evidence that the committee has gathered, you feel that to be necessary. It feels ever so slightly centralising for me to set timescales rather than leaving it to the local authority, but if you have specific cases and it is felt that the process has dragged on, that is clearly unreasonable. We would expect local authorities and other authorities to be reasonable.

**The Convener:** From the evidence we have heard, it seems that timescales are critical for some organisations. We understand that circumstances can be different in different places and that there may be funding issues—the Big Lottery Fund has been mentioned as something that can cause delay—but we have not seen any penalty written into the bill for a council that may be intransigently holding things up. Will you comment on that? There seems to be no stick to deal with a local authority that is stalling for no apparent reason.

**Derek Mackay:** Again, I have listened carefully to what the committee has said. I have to do two things. First, as I said to the committee before when we discussed the draft bill, we must ensure that we better calibrate and organise the various funding streams to support community groups, rather than going through the process time and time again. There is something in that around the timing and alignment of resources to support worthy projects.

Secondly, in terms of the provision, we were looking at prescribing in regulations to be made by ministers how long it should take for such a request to be considered; I can be specific on that period. I would not want that to be in primary legislation; it feels more proportionate and relevant to include it in the regulations.

There may be reasons why a community group wants to take longer—perhaps because of funding or another reason—so that even within that specific timeframe, because there may be exceptional circumstances, we propose in the bill:

“such longer period as may be agreed between the authority and the community transfer body”.

I will take on board the committee’s evidence and reflect on that in the regulations.

**The Convener:** In addition to the evidence, we will send you a communication that we have received from a council, which you will find of interest.

**Mark McDonald:** The minister makes a fair point. I was keen to ensure that we were not setting an absolute timescale, but were looking at how one could be reasonably reflected. The minister has said that he is willing to consider that.

To stay on the subject of timescale, but in respect of common good, I note that in your correspondence to the committee, minister, you discuss the

“benefit in requiring relevant authorities to publish their registers of assets”.

I know that that will apply in terms of common good assets.

We have heard evidence that suggests that for some local authorities the identification of common good assets is proving to be difficult—that is a significant understatement, given some of the evidence that we have heard. There will be some local authorities for whom this will be a much simpler exercise than it will be for others, so I wonder whether there will be an issue around timescales. The evidence that we took suggests that without some kind of defined timescale in putting together a register of common good assets, some local authorities could drag their heels in perpetuity.

**Derek Mackay:** Mr McDonald makes a valid criticism when he says that some local authorities may take their time. However, current CIPFA guidelines are clear that the best professional practice is that local authorities should maintain a separate register of their common good assets, so it should not be a significant cost or bureaucratic exercise to fulfil the bill’s requirements. I fear that the understanding of some local authorities might be that they have to clarify title deeds and have them registered, but that is a different interpretation. I am looking for an understanding of what common good assets there are, so that communities can understand and then have a say over how they are constructed and disposed of—essentially, I am pursuing a register.

Of course, we could dedicate a whole bill to the history of common good, and I do not propose to go through every complication relating to common good. I simply seek greater participation and identification of common good assets in a register that the public can understand.

On the timescale issue, I believe that we will produce guidance. In a similar vein to Mr McDonald's point on the timescales for consideration of asset transfer requests, I will also consider whether we should set that out in regulations. I am mindful that the land reform review group considered common good matters, so that may well be something that could come under a future land reform bill, alongside the provisions that I have outlined in the Community Empowerment (Scotland) Bill.

10:30

**Mark McDonald:** I am aware that I am testing your patience, convener—this will be my final question.

Should a broader approach be taken to the public bodies that have a duty in relation to allotments, given that there are a number of public bodies other than local authorities that own large areas of land that could perhaps make a significant contribution with regard to both allotments and the food-growing strategy?

**Derek Mackay:** That is a very helpful suggestion. I have to place the responsibility somewhere and, as it currently rests with local authorities, they seem the most appropriate bodies for it to lie with. However, in taking all the reasonable steps that I mentioned earlier to address provision, I would expect a local authority to be able to work with other public sector—or even private sector—partners to identify suitable sites. For example, it might be in the interests of a private sector project to address provision in a stalled space. Although the absolute duty rests with local authorities, I would expect them to work with other public sector partners, whether the police service, the fire service or the health service, to meet that demand. That would be an example of the true joint planning and resource management that we intend to take place in community planning partnerships.

**Stuart McMillan (West Scotland) (SNP):** Good morning, minister.

I have a couple of quick questions on the part of the bill on allotments. In its written submission for last week's meeting, the Scottish Allotments and Gardens Society suggested that 250m<sup>2</sup> should be the defined size of an allotment. In evidence, Ian Welsh from the society said:

"We want the 250m<sup>2</sup> there as a reference standard, not as an obligatory standard that has to be applied in all instances."—[*Official Report, Local Government and Regeneration Committee*, 5 November 2014; c 21.]

I heard what you said earlier, but do you think that the proposal that Mr Welsh made last week that the size of an allotment should be defined is a fair option?

**Derek Mackay:** Yes. I gave the reasons why we did not want to legislate immediately on the size of an allotment. That would be inflexible. However, we will produce guidance, which will state what we believe is a good size for an allotment. That will be provided for in legislation. The bill includes provision for the Scottish ministers to prescribe the size of an allotment, should the need for that arise in the future. If the scenario that Anne McTaggart mentioned were to arise, whereby local authorities gave folk tiny sites to meet their needs, we could legislate, although I hope that that would not be required. We will produce guidance along the lines that you indicated in your question, which will offer the necessary flexibility. I hope that we will be able to meet everyone's needs in the balanced way that you suggest.

**Stuart McMillan:** Would putting a defined size in the bill avoid ministers having to prescribe the size of an allotment at some point in the future? That would save time and public resources further down the line.

**Derek Mackay:** No, because if we sought to change that prescribed size for whatever reason, we would have to produce a bill dedicated to the size of an allotment, which would incur the wrath of the population of Scotland, who might wonder why the Parliament could not be a bit more adept and flexible. I realise that you are sitting beside the member who was in charge of the High Hedges (Scotland) Bill. I am not saying that such matters are not important, but if we are not flexible and we do not take account of local need and local geography, the approach that we take will be far too centralist.

We will provide the guidance and will expect people to apply it. The provision is available for us to make changes through regulation, if that is required. That is a far swifter way of effecting change than primary legislation on the size of an allotment, which seems utterly disproportionate. The provision is there, if it requires to be used. Other committees might accuse me of being a centralising minister, but I am trying to allow for local flexibility while reserving the right to prescribe the size of an allotment if we are required so to do.

**Stuart McMillan:** I have a question on part 3, which concerns participation requests, and part 5, which concerns asset transfer requests.

Representatives from Dundee suggested that having a named officer from that local authority was beneficial with regard to their ability to do the work that they wanted to do. I am keen to find out the Government's opinion on that. Do you support the idea of having a named officer in public bodies to support groups that make requests under part 3 and part 5?

**Derek Mackay:** It is for local authorities to consider how they will approach the matter. It might be that there is a procedural function in relation to purposes of contact that might be helpful. However, we want to ensure that there is a shared understanding of community participation. Having clarity on who community groups go to is a good thing, but we are not passing all the responsibility for community engagement or communication in a full public authority to one named person. It might be good practice for that person to be a co-ordinator who can oversee the sharing of information, but that is a matter for that authority. As long as there is a clear channel of who to go to, how to get information and how to initiate the process, that is fine. We will not specify that there must be a named officer.

In the exploratory consultation, some people expressed a concern that, although having a named person might bring some clarity, it might also just shift responsibility from every other officer to that one person.

With regard to liaison with community councils, it is good that, normally, a council has a community council liaison officer, but that person is not the only person who is responsible for engagement with community councils. It has to be much wider than that.

The idea is good practice, but we see no need to legislate for it, particularly because it might make community participation the responsibility of just one person in an organisation, even though it should be the responsibility of everyone in the organisation.

**Stuart McMillan:** I have a question relating to the report by the Delegated Powers and Law Reform Committee, which I also sit on. The report says that no specification has been provided about why the power in section 10 has been taken, nor the circumstances in which it could be exercised. How do you propose to address those concerns?

**Derek Mackay:** Do not ask me such unspecific questions.

It is my understanding that ministers have agreed a general power to issue guidance, which does not have to be covered in the delegated powers memorandum. The Delegated Powers and Law Reform Committee's concern was that community planning partnerships must comply with the guidance, rather than having regard to it, but that there would be no parliamentary scrutiny of that binding requirement. The committee has proposed that the concerns would not apply if CPPs only had to have regard to the guidance, and we are happy to make that change.

**The Convener:** You said that you do not think that there is a need to legislate in relation to named officers. There has been some discussion

about a definition of common good, and the committee has debated how it might be defined. Why has the Government chosen not to include a definition of common good in the bill?

**Derek Mackay:** It chose not to do that because there is an understanding of what common good is at the moment. If people are carrying out their duties with the CIPFA guidance in mind, they should already have an understanding of what common good is.

There is a range of definitions in legislation because the issue is historical. However, if we were to define it in new legislation, we would be certain to miss a bit. That is invariably an unintended consequence of writing legislation on historical matters.

**The Convener:** Is it possible that having a definition on the face of the bill could lead to circumstances that would disempower communities rather than empower them?

**Derek Mackay:** Essentially, yes, because assets would be lost. People would interpret the new definition when reassessing what was common good, and we could lose assets that people previously understood to be common good. It is a legal minefield, and I do not think that the approach would empower communities. Frankly, I think that it would be a feast for lawyers, and I do not see the need for that. That said, I am well aware of the committee's concerns about how some common good battles have had to be progressed through the courts. However, as I said, I think that a definition would impede any progress brought about by the bill.

**The Convener:** I am sure that we do not want to see a feast for lawyers.

Do the same reasons apply to there being no definitions of alienable and non-alienable common good? You will notice that I said "non-alienable" because nobody can say the other word. *[Laughter.]*

**Derek Mackay:** Essentially, yes, the same reasons apply because of how common good has been constructed over the years. Some approaches are centuries old and some are the construct of changes to local authority structures. It would be complex and bureaucratic to define the terms, and I do not think that the benefit of doing so would be proportionate. That said, the land reform review group has covered some of the same issues, so the question of definitions might be picked up in future legislation. However, I do not believe that definitions are necessary for the Community Empowerment (Scotland) Bill.

**The Convener:** I was very interested in your response on common good registers. The experience of many of us around the table who

have been in local government, supported by the evidence that we have received, is that there seems to be a need for people to go back through what can sometimes be centuries of paperwork to ensure that something belongs to the local authority. Some of us might argue that an asset should go on the register until somebody challenges that. Do you think that common sense needs to come into play on the construction of common good registers? Beyond that, do you think that it would be helpful if Audit Scotland, which, according to its evidence, seems to have a light touch on common good, looked at the issue a bit more than it does?

**Derek Mackay:** Your reflection on the need to apply common sense is very helpful. We should bear it in mind that not all common good assets are land—some might be artefacts, investments or other resources—so not everything will have a title. The register is a collection of what we believe to be common good—for example, it could include a provost's chain of office from a former burgh. When constructing a register, would it not be good practice to consult communities on how common good assets were used or disposed of? Where there is doubt about an asset, it would not do any harm to put it on such a register. That would mean that there would be greater community engagement and participation with regard to the disposal of such assets.

I am not requiring all common good assets to be registered with the keeper of the registers of Scotland or with the land register. The common good register should be a user-friendly register that people can understand and which can trigger their involvement when decisions are being taken about the disposal of assets. I agree that, as you suggest, common sense should be applied.

**The Convener:** Some witnesses have suggested that there should be a national register. Do you think a difficulty of creating such a register is that it might give an opportunity to folks who have tried to gain title to land and might make their job easier? Do you think that a national common good register would be workable?

**Derek Mackay:** Not particularly. I suppose that a live update of the 32 councils' registers could be produced, but I do not see what purpose that would serve. As this is about local empowerment and participation, I do not see how a national picture would help us. We know the value of the assets and the investments, as reported by local authorities, and I do not think that a national register would help.

10:45

We need to understand that common good assets, which are important to local communities,

might be paintings or other artefacts, such as provosts' chains. Some are investments, the value of which changes daily; and, of course, some are land. They are different in each local community. Some people in local authorities, particularly those in the accountancy and legal worlds, would have us wind up common good funds and put the money into mainstream budgets for local authorities to distribute as they see fit. This Government's position has been to protect the common good portfolio because the assets reflect local communities' inheritance. We do not propose winding up the funds and putting them in general funding.

**The Convener:** Finally on this subject, how do you see the asset transfer provisions in part 5 of the bill operating if land or a building is deemed to be common good?

**Derek Mackay:** There are specific provisions on that. That is where the inalienable—

**The Convener:** Non-alienable.

**Derek Mackay:** That is where the non-alienable provision comes into play. If an asset is inalienable—I will go for that word—the local authority's ability to transfer it is restricted. The restriction is just like any other condition or burden in the title deeds. The local authority can seek court approval for disposal in the usual way. However, that is because it is a common good asset. I do not think that there would be any problem with how common good land could be used—depending on its use. My point is that there would be no restriction on a community body using, managing or leasing such an asset—transfer of ownership or disposal is the issue—as long as that fits with the use for which the property was acquired.

**John Wilson:** Convener, I should have made the declaration earlier that I am the chair of a community organisation that is currently going through negotiations with a local authority on community asset transfer. I want to bring up some issues around that topic.

Stuart McMillan asked about the named person. Minister, you will be aware of some evidence to the committee in which community organisations claim that they have been sent round council departments, trying to pin down the responsible council officers who can deal with and answer questions about community asset transfer. Although you said that you are not in favour of having a named person, would you be minded to review your position if we found that many community organisations were being blocked, as they would put it, from requesting a community asset transfer because they could not identify—or the council was not prepared to identify—officers to deal with such requests?

**Derek Mackay:** If there was legal provision and a presumption in favour of either a participation request or an asset transfer request, I would think that procedures would be in place to take account of that. Just as with freedom of information requests, which were mentioned earlier, there is a responsibility for such requests to be processed. The legal requirements should encourage authorities to put good processes in place. If they do not and a request is not handled competently and effectively, I suspect that the Scottish Public Services Ombudsman will have something to say about that.

That takes us back to the timing question. If an authority messes around with a bid or a request, the clock is ticking for that authority. It will be at greater risk of not being seen as handling requests competently if it does not even get the right person involved.

To answer your question, I do not want to be too specific about how local authorities should conduct themselves—I say “local authorities”, but this will apply to all parts of the public sector—although they will have to show that they have seriously considered any bid timeously and effectively. If they refuse, there will be a burden on them to show on what ground. Leaving that to the last minute would seem careless on their part and they would risk challenge if they did not carry out the process properly.

**John Wilson:** Thank you for that response. I am glad that you have put on record the legal requirement for local authorities to engage actively with communities on such issues.

My next question goes back to the convener's point about the value of land or property involved in asset transfer. From discussions with community organisations, I know that some local authorities put a market value on the land or property that is to be transferred. That can be a disincentive, particularly when organisations are drawing down funding from bodies such as the Big Lottery Fund so that they can carry out major improvements to or building works on the land or property that is being transferred. What advice would you give local authorities when community organisations request asset transfer at either zero or low-cost value?

**Derek Mackay:** I would first like to make a point on the previous question about the named officer. There is an important point of emphasis. Previously, the ombudsman or the courts would not have had any legislation to point to—only good or bad practice—to say that a local authority did not handle a bid for an asset transfer competently. However, given the presumption in the bill, the courts and the ombudsman will be able to point to what councils should have done. That is a game changer for community rights.

On the value of asset transfer requests, local authorities can already transfer assets without realising the full commercial value. They have been able to do that for some time, so long as they do transparently.

The Scottish Government could not do that, because the Scottish public finance manual made no mention of it—in fact, it expected market value to be realised. I have already changed the situation—in advance of the bill—so that, right now, if an asset is transferred to a local community, not just the realisation of commercial value but the wider social benefit can be considered. That change has already happened; it required a change not in law but in our accountancy practice. The change also extends to the Government.

The bill will raise expectations and deliver the culture change that is required, although it will be for each local body to determine the proportionate and relevant level of transfer or contribution. It could be zero: if the public benefit justifies it, the local authority may not want any cash value for a property transfer. Some groups may choose leasing, or use of rental, rather than ownership, but we do not say specifically that it should be a zero-sum game. We are keeping local flexibility. The council has to show reasonableness around that, and if the refusal of a request is challenged, it can go to appeal at the local level.

To be clear, right now, local authorities do not have to realise the commercial valuation of a property. It will be made very clear in the guidance on the bill that that is already the case. That is something that local authorities should already know.

**Alex Rowley:** I will focus on outcomes, which I have a couple of questions about.

The Scottish ministers will have a duty to develop, consult on and publish a set of national outcomes for Scotland. What currency or value will those outcomes have and where will they sit alongside the work of national organisations that are working to a set of national targets? For example, community planning partnerships often say that some of the targets to which the national health service is working can conflict with the outcomes that they are trying to achieve. Will that be joined up? Will the national outcomes supersede targets or will organisations still have conflicting and competing interests?

**Derek Mackay:** We should all operate as team Scotland at a national level. The 16 national outcomes feed into the local outcomes through the single outcome agreements. Therefore, there should already be alignment. That will be put on a statutory footing.

The way in which the Government conducts its business by aligning its agencies and departments with the national outcomes and our purpose is recognised internationally as good practice. That approach works all the way through in partnership, down to community planning partnerships.

There are indicators beneath each of the national outcomes. The national outcomes are difficult to argue with, but they give clarity on what the Government is trying to achieve.

I would expect even closer alignment, because the approach will be on a statutory footing. Agencies that are currently aware of the approach will be even more aware of it when the bill makes it a duty on ministers.

**Alex Rowley:** People in the NHS commonly refer to health improvement, efficiency and governance, access and treatment—HEAT—targets. I have attended meetings at which the minister and the Cabinet Secretary for Finance, Employment and Sustainable Growth have also been present when NHS chairs have said that there is sometimes a conflict between the targets that they are trying to meet and the outcomes that the NHS has agreed.

Can the minister explain a bit more his thinking about how those national outcomes will relate to community planning partnership outcomes, given that communities need to have a more proactive role in how services are planned and delivered?

I repeat an example that the convener gave from his constituency during an earlier evidence session. A local community argued that mental health was one of its key priorities, but was told that one of partnership's key priorities was smoking cessation, as that was in its health and wellbeing outcomes. The priorities seemed to conflict a bit.

How can things operate in a joined-up way so that we have joined-up government and joined-up services and so that that approach filters through into community planning and somehow filters up from the community's views on its priorities?

**The Convener:** I should clarify that that example was not from my constituency; it was from my previous council ward and happened before the integration that we are now going through. I am sorry, minister, but I had to clarify that.

**Derek Mackay:** Most of the Community Empowerment (Scotland) Bill is about people, empowerment and the preventative approach, but integration is another pillar of public service reform, of course. At the national level, the outcomes are straightforward things that we can all agree on. They are not in conflict at all with the

accountability of local community planning partnerships, departments or agencies.

For example, one national outcome is:

"Our children have the best start in life and are ready to succeed."

Alex Rowley mentioned health, and another national outcome is:

"We live longer, healthier lives."

Another is:

"We have tackled the significant inequalities in Scottish society."

I could go on. The national outcomes are all quite clear, and public bodies should align themselves to support them. The Cabinet, ministers and departments certainly do that, and local community planning partnerships have a range of indicators and a menu of options so that they can align themselves to the most appropriate at the local level.

11:00

Alex Rowley raised a critical issue. The health service is driven by the HEAT targets, which are very specific. Local authorities are sometimes driven by other statutory targets and, increasingly, by their own benchmarking. Everyone involved has a sense of responsibility to their own organisations, but at community planning partnership level they should be sharing the responsibility and accountability for one another's actions in delivering the plan for place and the single outcome agreement.

Most of those outcomes cannot be resolved nationally or locally in isolation—children will not have healthier lives if public bodies do not work together. The targets all matter because we are accountable, as the Government and as MSPs, for meeting those targets, just as councillors are accountable for meeting their local obligations. The bill expects public sector partners to work together in focusing on the outcomes that are delivered by the process, but there will still be room for localism. It is about sharing the goals and targets and having a greater sense of shared responsibility. The Accounts Commission has identified the need for people not to be too departmentalised but to think more as a partnership about how to provide local services.

We have heard some examples of great partnership projects happening in spite of community planning partnership boards rather than because of them, so the boards have to create the right culture of partnership and be mindful of their own targets. I am sure that, if we abandoned the HEAT targets or other input measures, the Labour Party would be first to

criticise us. We have to keep the targets in place, and they are not in conflict with one another. In working in partnership to focus on outcomes, the Parliament must increasingly move away from a focus on outputs. The process is recognised as world-leading practice in that respect.

**Alex Rowley:** I am not saying that there are any easy answers, but I suppose that it is a question of getting a tangible outcome that you can measure and can say has made a difference as a result of the organisations coming together and planning. You referred to the Christie commission, which was clear that we could not go on in the way that we were going and that much more preventative work needed to happen.

You mentioned children. The number of children who are being taken into the care of local authorities across Scotland continues to rise, although community planning partnerships have had a strategic outcome on that. At what point does that become real and measurable for people and communities so that we can say what community planning means, what community planning partners are signing up for, what role the third sector plays and where funding is being driven? Is there a point at which that can happen, or are we simply talking at a high level, while the reality is what is happening on the ground and the two never meet?

**Derek Mackay:** The issue is difficult, and your question identifies that it is difficult to legislate for. We already say, "Thou shalt work in partnership to focus on outcomes." That will certainly be strengthened by the bill, because local community planning partnerships have to be consistent with the national outcomes, although there is flexibility about how to operate locally.

The analysis is right; we need to take a more preventative approach, but it cannot be done through legislation unless we are amending the structures of health and social care. The best interventions are coming from projects, partnerships and joint working. The positive parenting programme and partnership nurseries are examples of projects delivered in partnership between health boards and local authorities—that involves not just one part of the public sector but a partnership aligning resources, sharing good practice and co-locating, which we should not have to legislate for. That should happen through the statement of ambition, the preventative approach and the general approach to public service reform.

The change funds of more than £500 million were intended to achieve some of the transformational change, and health and social care integration should achieve more of that. We are doing what we can within our existing resources and I do not think that we need a further

legislative basis to achieve that. The issue is about leadership and practice on the ground.

**Alex Rowley:** I do not disagree with you about legislation, which is why we should be careful about what the bill can achieve. We will need something more fundamental if we are to tackle some of the national outcomes out there.

I will focus on another example: Scottish Enterprise's role. Scottish Enterprise gave evidence to the committee about its role as a community planning partner. I assume that it has national outcomes. It is focused on inward investment, large companies and jobs that come from those things. However, at the local community planning level, there are two key issues. The first issue is targeting and supporting the growth of small and medium-sized enterprises, which is where job creation comes from. The second issue concerns people having skills, holding to account education authorities and colleges, and working together.

At the local level, Scottish Enterprise's input to community planning partnerships is fairly limited. We need to engage local employers to play a leading role. At a meeting that you attended with COSLA, one of the criticisms from the third sector was that it believes that CPPs are dominated by local authorities and health authorities. What is the third sector's role? What is the role for business and industry at local level? Should we look again at that, at what measurable outcomes are put in place and at who is in charge of driving the agenda?

**Derek Mackay:** Mr Rowley will be aware that local economic development is the responsibility of local councils. The function was transferred post the 2007 concordat. Business gateway provides some of the interface for smaller businesses and new business start-ups.

Scottish Enterprise still has a role to play in bringing its expertise to the table, as I mentioned. It has a clear remit, which it is very good at fulfilling. Bringing hundreds of jobs to a specific site, or sustaining or expanding the number of jobs is, on scale, as important to a local community as small and medium-sized enterprises are. That is all about balance.

There is a point to make about greater engagement of the private sector—be it the chambers of commerce or key local employers—in understanding what CPPs are doing. That connects to the employment agenda, to preparing young folk for vocational opportunities and to understanding the local population. There is some benefit to that. We do not want to create a new bureaucracy, but there is a greater role for the private sector to be party to CPPs, although

engagement must first be with the community, to establish what it wants.

I do not disagree that we have to make the right connections with the business and industrial world to ensure that our young people have skills and opportunities for the future. Someone from Scottish Enterprise might attend a CPP board meeting and listen for hours to discussions about inequality, health inequality, deprivation and housing and think, “Why does that matter to me—to Scottish Enterprise?”, but it would help them to understand the local workforce and some of the challenges that it faces, including those that result from geographic inequality and deprivation. Then, in partnership, Scottish Enterprise could work out how to support the workforce and produce strategies.

I do not object to greater private sector exposure to community planning. The sector does not have just a seat at the table; the participation must go much wider and deeper than that.

**Cameron Buchanan:** As common good land—inalienable and alienable common good—is such a minefield and we do not have a definition of it, would you consider leaving it out of the bill?

**Derek Mackay:** I could do that for an easy life, but I propose to include it because, in all our work, including exploratory work, people have said that they want a greater say in how their taxes and resources are spent and used in their area. That is even more the case with common good, because much of the population understands that common good land is for the benefit of an area’s inhabitants. There has been criticism that there is not enough engagement in, understanding of, transparency about and community involvement in that. The bill will redress that with the register, participation, transparency and involvement.

I am not trying to undo hundreds of years of legislation and accumulation of common good disputes but, as a principle, we want communities to have greater involvement in how their common good is used and recorded. That has been welcomed.

**Cameron Buchanan:** Common good property cannot be defined, so the bill will be very loose. Surely that is the problem. Will we get hung up on common good land and concentrate on it rather than on the rest of the bill? I am concerned about that.

**Derek Mackay:** No. My time has been consumed by common good only in relation to one act of Parliament, which concerned Portobello high school. In that case, the City of Edinburgh Council made a specific request through a private bill to use land for a different function. Other than that, the issue does not dominate my mailbox—or inbox, as it is in modern times.

My fear is that, if we try to define common good, we will leave something out and we will disempower the community through an omission rather than empower it. I do not see an urgent need to define it, but I see a need to give communities greater involvement in our current understanding.

CIPFA and accountants in local authorities largely know what common good assets there are. All that we are asking is that the assets are put on a register so that the public can understand them and be involved in how they are used. That is not a huge new burden.

**Cameron Buchanan:** Does that include moveable assets such as pictures?

**Derek Mackay:** Yes. I do not think that we can exclude those elements. The approach should not be too bureaucratic. There should be an inventory.

**Cameron Buchanan:** There probably is in most cases, but not necessarily in some cases. I was just trying to clarify that.

**Anne McTaggart:** I share with the minister that, on one of our fact-finding visits, I met a plot-holder who is a single parent, who told us:

“my allotment is my garden, my kitchen, my dining room, my gym and my social worker.”

Their allotment is an enriching thing for them, and their comments showed how the allotment community supports itself and the impact that allotments have on the lives of people who are involved.

How will the bill further help those with mental and physical disabilities? What help will they receive to run allotment plots?

**Derek Mackay:** I do not think that the bill says anything specific about that. Anne McTaggart has identified some of the benefits of having an allotment and participating in a healthy lifestyle, which many of us could benefit from. I propose to lodge an amendment that talks a bit more about inequalities. That is necessary so that, when people are weighing up decisions on asset transfers and so on, they think about inequalities. Local authorities might well want to consider that more fully in relation to allotments.

The benefits are well understood, and those who can benefit most may pursue allotments, but I would not put anything specific in the bill about who benefits. [*Interruption.*] I am being corrected.

**The Convener:** If Dr Fox wants to comment, that is fine.

**Derek Mackay:** Okay—because the other two officials are silent. [*Laughter.*]

**The Convener:** You might pay for that, minister.

**Alasdair McKinlay (Scottish Government):** We know when we are supposed to speak. [Laughter.]

**Dr Amanda Fox (Scottish Government):** The provisions in the bill apply only to physical disability. We have had discussions with stakeholders since the bill was drafted and we recognise that an extension is needed, so we suggest that an amendment be made at stage 2 to broaden the definition in relation to disability.

**Derek Mackay:** There you go. You heard it here first.

**The Convener:** Does Anne McTaggart want to come back in?

**Anne McTaggart:** No, that is fine.

**Derek Mackay:** Go for something else while you are on a roll. [Laughter.]

11:15

**The Convener:** The bill talks of annual reports on local outcomes improvement plans. How important will those annual reports be, and how will they encapsulate the involvement that there has been with communities and the CPPs?

**Derek Mackay:** The improvement plans will identify what needs to be done and how, particularly in partnership. Given the extended and expanded duties to consult people, we will expect local communities to be involved. The plan for place is important. I said that I wanted to strengthen accountability in community planning partnerships, so reference needs to be made to the national standards on engagement, which are in place, although not everyone keeps to them. That legislative provision, which I should be able to introduce at stage 2, will sharpen and refine that, although of course we will expect people to take the local improvement plans seriously. There will also be proportionate inspection and auditing of community planning partnerships and local authorities through the quality assurance programme that we have undertaken.

**The Convener:** We heard from the Accounts Commission and the Auditor General for Scotland on various auditing points. How can the Government and Parliament hold CPPs to account for the delivery of their local outcomes?

**Derek Mackay:** We look at the national picture, and you will see reports, as I will, about the Government's role. We will have a location director in every community planning partnership and we will see the indicators.

I am not sure that the committee and the Parliament should have a specific role in probing individual community planning partnerships, because it would feel slightly centralist if we were

to pick on a community planning partnership. We should understand the national strategy, the national themes and the legislative framework, and the committee should hold the Government, ministers and local authorities to account collectively on our performance.

More energy has to be spent on how communities hold their community planning partnerships to account, and that is fair criticism. We cannot just wait for the rolling programme of audit agencies to reach a community planning partnership. Something more specific to local communities has to hold them to account, rather than us in Edinburgh holding each of the 32 community planning partnerships to account. That does not feel proportionate. How can we know better than a community what is right for it? It is the community, not Parliament, that needs to be empowered, although I am sure that we will execute our national duties adequately. I look forward to the committee's recommendations if it thinks that a further process should be considered.

**The Convener:** If we take all that together, consultation with communities is the key. People must be involved at various levels in their communities and in the local outcomes improvement plans. How do communities deal with the national outcomes? Will communities be consulted on the formulation of national outcomes?

**Derek Mackay:** We expect to consult widely and to publish and review that set of outcomes. If something is about the people of Scotland, we should engage with them. I would not want to specify in primary legislation how that should be done, but it absolutely should be done.

**The Convener:** We have been out and about and we often hear a lot of negative stories about things that are not working, but there are also a huge number of positives. I know that it is difficult to legislate to ensure that common sense goes across the board, but how do we ensure that best practice is exported throughout the country?

**Derek Mackay:** I am loth to say that we should have a website, because we tried that and it did not really work, but new social media are showcasing great community projects and third sector projects. We will work closely with the what works Scotland initiative, which has conducted research into what is working well in community planning partnerships, and with the national community planning group and third sector organisations nationally and locally to showcase what can work. However, the best projects speak for themselves, whether they are transformative or life changing, and we can replicate much of those projects' work around the country.

It is worth looking at projects that have received funding. I mentioned the funds that we are expanding, and I hope that they will have a domino effect on other projects, whether they are for land acquisition or the transfer of assets, to make a difference for local communities and empower them. Notwithstanding some criticism, we need to raise expectations of the bill so that people take advantage of it when it is enacted.

**The Convener:** Thank you for your evidence.

11:20

*Meeting continued in private until 12:21.*



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