

The Highland Council
Highland Council 30th October 2014

Agenda Item	12
Report No	HC/26/14

Community Empowerment Bill – update, implications and opportunities

Report by Head of Policy and Reform

Summary

Local authorities have a particular role in leading, promoting and supporting community empowerment given their local knowledge and democratic mandate. This report summarises the provisions contained within the Community Empowerment (Scotland) Bill, how officers responded recently to a call for evidence from the Local Government and Regeneration Committee and outlines the implications of, and opportunities from, the Bill for the Council.

1. Background

- 1.1 The Council has responded to two earlier rounds of consultation on the proposals for the Bill, with responses agreed at the Community Safety, Public Engagement and Equalities Committee and Resources Committee. In June 2014 the Community Empowerment (Scotland) [Bill](#), was introduced to the Scottish Parliament.
- 1.2 The Bill provides a framework for empowering communities including through the community control of land and buildings, meaningful community participation in the decisions affecting people and communities and improving community planning. The Bill draws on the definition of community empowerment agreed between the Government and Cosla as ‘...a process where people work together to make change happen in their communities by having more power and influence over what matters to them.’¹
- 1.3 The Bill and [accompanying documents](#) recognise that empowerment in practise can mean different things to different communities but they also recognise that empowerment is not the same as consultation or engagement; empowerment is about communities leading change for themselves.
- 1.4 The Bill reinforces the view that public bodies should focus on the assets within communities and on the potential individuals have to improve the quality of their lives, moving away from an expectation that this is the sole responsibility of public bodies whose efforts have largely and traditionally focused on planning services around shortcomings and deficits. The Bill supports the preventative agenda.

2. The Bill process, evidence fed back and implications for the Council

- 2.1 The Bill is currently receiving stage 1 scrutiny by the Local Government and

¹ The Scottish Community Empowerment Action Plan: Celebrating Success: Inspiring Change: published jointly in 2009 by the Scottish Government and COSLA.

Regeneration Committee. There was a call for evidence from this Committee with the deadline during the pre-referendum period. Officer evidence from across services was submitted and is more technical in content. This is attached at Appendix 1. There are likely to be further opportunities to contribute views on the Bill as it is considered by Committees of the Parliament. This is detailed in section four below. Enactment is expected by summer 2015.

2.2 The Community Empowerment Bill as introduced has eight key sections. These are summarised below. Members are also advised on whether any of the earlier points made by the Council have been taken on board and of the additional issues Council officers raised during the recent call for evidence. Implications for the Council are identified for each of the eight key sections.

2.3 **Part 1 - National Outcomes**

The Bill confirms that future Governments will develop a set of national outcomes, publish these and review them at least every five years. The Bill provides for consultation on the outcomes before determining them. Progress is to be monitored and reported.

2.4 View fed back to date

The Council has welcomed this approach in past consultations on the development of the Bill. Officers have noted that the extent to which the provisions for national outcomes, their review and performance reporting will empower communities will depend on:

- what those outcomes are;
- how Ministers consult on them, the reach of that consultation and how they can demonstrate they have listened;
- the accessibility of performance information to a range of interests and community groups and how that can have meaning to individual communities.

2.5 Implications

The Bill gives legislative force to continue the current process of the Government specifying national outcomes. Currently there are 16 national outcomes. As the Bill requires the Government to consult on national outcomes the Council would have to make full use of all mechanisms to provide views and to ensure the issues that matter to the Highlands are taken fully into account.

2.6 **Part 2 - Community Planning**

The Bill aims to place community planning on a firmer statutory footing and provides:

- A definition of community planning which can be summarised as improving outcomes through public service provision;
- A new statutory duty that each Local Authority area must have a Community Planning Partnership (CPP);

- A defined list² of who must participate in community planning. Those listed are regarded as the CPP and as community planning partners. The CPP should consider which community bodies should participate and where they wish to, enable them to do so. Structures for participation are at the discretion of the CPP.
- That community planning must be facilitated by five identified partners and not solely by local authorities. The identified partners are: local authorities; Health Boards; HIE; Police Scotland; and the Scottish Fire and Rescue Service.
- That each CPP publishes a plan for improving local outcomes based on local circumstances and be consistent with national outcomes. The plan must be subject to consultation. Progress must be monitored and reported annually, with each partner to be equally accountable for the delivery of this plan.
- That all community planning partners must co-operate and contribute funds, staff and other resources as appropriate for the plan and securing the involvement of community bodies in the process.
- That the CPP must comply with guidance issued for community planning.
- Scottish ministers must promote community planning and consider requests from CPPs to become corporate bodies.

2.7 Views fed back to date

Improving legislation to support community planning better has been welcomed. In the recent response officers:

- Welcomed the defined list of core CPP partners and the flexibility to include others locally as appropriate and that the duties and accountabilities of community planning partners are shared. However concern was expressed that Third Sector Interface organisations are not included in the defined list of CPP partners alongside public bodies and that community groups do not have to be formally constituted to be community planning partners.
- Expressed concern that the legislation does not enable CPPs to include their own priorities where those may diverge from the national outcomes. Without the ability to do this, this could disempower communities if national policies do not reflect the needs in a CPP area and are too top down.
- Sought clarity on the audit and inspection process for community planning.

2.8 Implications

² Defined partners that must participate with each other in community planning are: the local authority; community bodies (whether or not formally constituted established to promote or improve their community's interest); the management board of a regional college of further and higher education and any regional strategic body for further and higher education; Police Scotland; Health Board; HIE or Scottish Enterprise; any integration board (established for health and social care); National Park Authority; SEPA; Scottish Fire and Rescue Service; SNH; Scottish Sports Council; Skills Development Scotland; Regional Transport Partnership; and Visit Scotland.

Many of the Bill provisions build on the Single Outcome Agreement approach already in place. Also the CPP at a Highland level has been reviewing its governance and membership arrangements and the provisions on governance, including the shared responsibilities among partners will be helpful to this process. The Bill should mean less reliance on the Council for organising and chairing CPP meetings, providing minutes and agenda services, initiating changes to the partnership and co-ordinating responses on behalf of the CPP. However the sharing of responsibility for achieving outcomes is already underway in the Highland CPP as Highland partners do take lead responsibility for the achievement of specific outcomes; only two out of seven are led by the Council.

2.9 The Bill will push the partnership to increase the pace on community planning arrangements at a local level, joining up engagement and empowerment processes and on integrating and sharing resources. The partnership is well placed to progress with this agenda, with these issues already discussed at Board level. At the recent meeting in October the Board agreed the priorities for improving community planning. These are attached at Appendix 2. One of the six priorities is to engage in dialogue with communities in order to empower them to participate in service planning and delivery.

2.10 **Part 3 - Participation Requests**

The Bill outlines that if a community group feels it can improve the outcome of a public service it has the statutory right to request to take part in a process to improve that outcome. The process for handling requests is prescribed including how to establish the process and meeting various timescales, for example the process being underway within 90 days of it being established. At the end of the process the public body must also publish reports on whether the outcome was improved and describe the community group's contribution to that. In this process community groups may come together and public bodies may come together. Public service providers can disagree to requests only where there are reasonable grounds and these must be explained.

2.11 Views fed back to date

The Council has welcomed this approach in earlier consultations. In the recent evidence provided, officers:

- Welcomed the decision taken to simplify the various definitions of a community body and also the inclusion of a clause to enable public service authorities to decline multiple participation requests for the same outcome, an issue the Council expressed significant concern over during the last consultation.
- Noted however that the current Bill still lacks clarity regarding reasonable grounds for refusing any request and that guidance to support this legislation will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in.

2.12 Implications

The encouragement for communities to be involved in improving outcomes is not necessarily new for the Council given various programme commitments

and work underway on, for example, self-directed support, tenants managing their estates, the community challenge fund, the LEADER programme, the role of parent councils and our petitions process. However with the legislation we will need to design a process to comply with the prescribed stages and timescales. We will also need to build capacity in the council to respond to requests positively. This will be a matter of freeing up time and developing the culture further that values and supports community empowerment.

2.13 Requests to participate in improving health and social care outcomes would be aided by the integration of those services. However, given that local outcomes are likely to involve more than one service provider, it would make sense for the process to be designed with CPP partners. This raises opportunities for the role of Area Committees and District Partnerships in the process.

2.14 **Part 4 - Community control of land and buildings: Community Right to Buy**

This section of the Bill is written to replace provisions in the Land Reform (Scotland) Act 2003. It aims to broaden the right and make purchase easier. New and replaced provisions include:

- Extending community right to buy to urban as well as rural communities, lifting the 10,000+ population exclusion so that all of Scotland is included;
- Community groups will also be able to buy abandoned or neglected land and buildings, even if the owner does not want to sell and subject to Ministerial approval;
- Streamlining the processes for purchase and clarifying aspects of the process including defining communities and group eligibility, ballot arrangements, extending the period for concluding sales, dealing with late applications and the valuation process.

2.15 Views fed back to date

Officers welcomed the decision taken to extend the Community Right to Buy and include this within the scope of the Community Empowerment Bill. Concerns were expressed however regarding the complexity of a number of the provisions including mapping and late registrations. It was also suggested that more clarity is needed for communities to be able to demonstrate land is abandoned or neglected.

2.16 Implications

Across Scotland nearly half a million acres of land have transferred into community ownership and the Government has set a target of increasing this to one million acres by 2020. Community buy-outs have been pioneered in the Highlands and Islands with over 60 community owned assets (mostly land including forests) in Highland assisted by HIE. The main implications for the Council will arise from the likely increased interest in communities to own land and derelict or abandoned buildings in both rural and urban areas, including those currently in Council ownership. This could require more Council resources in support through funding and staff time. We can also expect more requests to support the community ballot process. Capacity to respond to requests will be needed.

2.17 **Part 5 - Community control of land and buildings: Asset Transfer Requests**

The Bill provides for community organisations to request ownership, lease or management of publicly owned buildings or land, whether or not they are available for sale or deemed surplus to requirements by the owning body. The initiative is placed with communities and their requests must be granted unless there are reasonable grounds for refusal. Public bodies must also respond to information request about the assets it holds when requested. Communities have the right to appeal to Ministers where requests are refused; although for Councils the appeal route is through the Council's own appeals process. If an asset transfer is agreed the public authority must make an offer to the community body within 6 months, unless the community body and public authority agree to an extension.

2.18 Views fed back to date

Officers welcomed the decision that it would not be appropriate for an external body to review any decision taken by a Local Authority. A number of issues were raised regarding the process for considering and determining asset transfer requests. These included how to deal with multiple asset transfer requests (ATR) for the same asset; that any ATR needs to evidence how each of the core criteria will promote, improve and deliver benefits to the community; and that safeguards are required within the legislation or regulations to ensure that any successor owner benefiting from the asset transfer delivers benefit to the community.

2.19 A further area of concern noted is that the ATR process in essence removes the discretion of the (local) authority to seek a Best Value outcome to a property disposal, and thereby potentially foregoing a capital receipt that could be reinvested/recycled through its capital programme to deliver improved public services. Clarity was requested on whether other aspects of legislation require to be repealed to reflect this.

2.20 Implications

Since 2010 the Council has transferred 24 assets into community ownership, including 10 village halls. Currently a transfer to community ownership is dependent on communities approaching the Council about vacant properties but the Bill enables requests for land and buildings in use. Most transfers to communities take place for £1 and are approved through the asset management board. Based on desk top market values the discount for the 24 assets transferred so far totals £1.975m. The Bill will impact on the annual targets set for raising income through market value sales, currently at £1m.

2.21 Experience to date shows that sometimes when a group approaches the council for a property they may have interest but not capacity to take it on and this can delay the asset transfer process. This highlights the need for communities to be supported better through the process and good practice identifies the need for support pre, during and post transfer. For some communities, leasing may be a route to ownership in the longer term.

- 2.22 Similarly, sometimes our asset transfer process takes too long for those groups able to move more quickly. As well as supporting groups to take on ownership or leasing we will need to re-design our process for transferring assets that complies with the Bill's timescales and makes the process clear and transparent, with a view to enabling more transfers.
- 2.23 **Part 6 - Common Good Property**
The Bill aims to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in decisions taken about their identification, use and disposal. It requires Councils to establish and maintain a list of all common good property and make this publically available. When establishing this register, Community Councils and other community bodies must be invited to comment on it as a way to highlight any items they believe should be included or omitted. The Council must also consult on any decisions to sell or change the use of common good property, and the public must be informed of any decisions.
- 2.24 Views fed back to date
In responding to the call for evidence officers expressed disappointment that the concerns noted during the consultation phases had not been addressed; namely the requirement to consult with all Community Councils in a local authority area and not just the ones for each Common Good area and the need to consult with all relevant community groups. This would appear to be an unnecessarily onerous task and one open to interpretation. The current provisions would also include un-constituted groups which appears inappropriate.
- 2.25 Implications
The provisions contained in the Bill related to Common Good funds in general and we already have a register of Common Good property, although in future this will need to be published on the Council's website. The areas of concern however, as noted above, are the consultation implications when creating the register, maintaining the register and any disposal of Common Good property. If the Bill proceeds in its current form this will be administratively onerous.
- 2.26 **Part 7 – Allotments**
The Bill repeals allotments legislation dating from 1919, simplifies provisions and recognises the interest in community growing. A new definition of allotments is provided, and can be summarised as land owned or leased by a local authority on a non-profit basis to grow vegetables, fruit, herbs or flowers. Councils must keep a waiting list for allotments and take reasonable steps to provide more allotments if the list becomes too long. The Council will need Scottish Government permission to sell or change the use of land used for allotments. An allotments report must be published each year along with a food growing strategy. This must set out the land identified for allotments and other community growing and how it will meet demand. The Council must set regulations for allotments covering allocations, rent, maintenance and whether keeping livestock and selling surplus produce are allowed.
- 2.27 Views fed back

Officers noted that the Bill only refers to Local Authority owned or leased land. The legislation still does not recognise the role of other statutory bodies by placing duties on all public sector land owners to make suitable surplus land available. There is also still no provision for the Local Authority to limit the number of sites that must be provided simultaneously across the entire Local Authority area, potentially presenting a capacity issue for the Council.

2.28 Implications

Annual reports on allotments are provided to the Planning, Development and Infrastructure Committee and the Council's programme has extended the commitment to include the encouragement of community growing. The most recent annual report (May 2014) listed nineteen new allotment sites supported by the Council (nine since 2009), a further five allotment associations identifying suitable land and six associations seeking sites across the Highlands. In addition 33 community gardens were identified and members agreed to target Council financial support to community growing initially in areas of multiple deprivation.

2.29 At this stage it is not anticipated that the current allotments policy will have to change significantly from our current processes however we will need to ensure that the information we hold fulfils the reporting requirements contained within the Bill. We are unlikely to know the full details of this until the detailed guidance is published. However, there could be capacity issues if we are unable to limit the number of sites to be provided at any one time.

2.30 **Part 8 - Non-Domestic Rates**

Councils will have the power to create localised business rate relief schemes to encourage businesses in the area. There will be no restrictions but any local reliefs will need to be fully funded by the Council.

2.31 Views fed back to date

The Council has been supportive of this element of the Bill in past consultations. It aligns with commitments in the Programme on local taxation and non-domestic rate incentives for town centres in need of support.

2.32 Implications

The main implication is the need to fully fund any rate relief schemes.

2.33 **Other feedback**

Two other areas of feedback were provided on the Bill. These relate to:

- Community Councils - with officers noting disappointment at the noticeable absence within the Bill to strengthen the position of Community Council roles and responsibilities and the scope for them to have incorporated status. Officers noted that it appears to be at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.
- Equalities – with feedback seeking the Bill to make direct links to the duties set out in the Equality Act 2010. It was stressed that the connection should recognise that different groups have historically been

under-represented in community activities or faced barriers to participation and the Bill is an opportunity to help mainstream the duty into the scope of its powers. It will be important to ensure that all groups are empowered equally by the Bill.

3. Further opportunities for empowerment

3.1 Further opportunities for empowerment

Most provisions in the Bill can be seen as a continuation of practise and the Council can comply by increasing the pace of some work already programmed, particularly through the CPP, or through putting new managerial arrangements in place for e.g. new processes for responding to rights to participate in improving outcomes, supporting asset transfer and consulting on Common Good Registers.

3.2 However rather than simply responding to the Bill's requirements, the policy memorandum accompanying the Bill is enabling and recognises the particular role of local authorities in leading, promoting and supporting community empowerment given its local knowledge and democratic mandate.

3.3 The Council can demonstrate leadership, support and promotion of community empowerment to date through:

- The council's values, these are listening, being open, valuing the views of others, improving services, supporting, partnering and delivering.
- The council's programme with one of the seven themes on empowering communities with commitments across the programme relating to improving participation, supporting communities, letting people have more of a say and being more accessible as an organisation.
- The Council's action plan on increasing voter turn-out, especially among younger people as overseen by the CPE Committee.
- CPP progress, particularly on joining up approaches to engagement and seeking new ways of empowering communities to participate in service delivery and planning.

3.4 The Bill is well timed to consider what more can be done to empower communities given the recent increase in democratic participation in the Referendum, the subsequent Smith Commission and the publication from the Commission on Strengthening Local Democracy. These issues are considered separately at this meeting of the Council.

3.5 In June this year we included an expanded set of questions in our annual survey of the Citizens' Panel about civic and democratic engagement. The full report is available on the website, and positive responses on being involved in the democratic process include:

- 77% of respondents said they were interested in the democratic process;
- Over 50% said in the past 12 months they participated in voting in an election, created or signed a paper or e-petition and contacted their Councillor, MSP, MP or MEP;
- 69% said they wanted to be involved in decision in their area (with

people aged 16-24 years more likely to want this involvement – at 89% compared to 56% of those aged over 65 years).

- 53% said they wanted to be involved in decision making in the country as a whole, with higher levels among 16-24 year olds (at 72% compared to 41% of those aged over 65 years).
- More people agreed than disagreed that every citizen should get involved in politics if democracy is to work (48% compared to 22%) and that they enjoyed working with other people on common problems in their community (39% compared to 20%).
- More people agreed than disagreed that the Council is helpful and listens to local people.

3.6 Responses indicating that more needs to be done to increase the confidence of individuals and communities to be involved in decisions affecting them include:

- More people disagreed than agreed with the statement 'when people like me get involved in politics they can really change the way the country is run.' (36% compared to 33%).
- Only 18% felt they had some or a great deal of influence over decision-making in their local area, compared to 43% saying they had not very much influence and 38.5% saying they felt they had no influence at all.
- The main personal barriers for limiting influence were: lack of time, feeling their opinion would not be listened to, not being given the opportunity, not knowing how to get involved, not feeling qualified enough, not knowing enough about decisions and not feeling able to make a difference.
- More people disagreed than agreed that they would do a good job as a local councillor or MSP/MP (36% compared to 31%).
- More people disagreed than agreed that the Council represented their views (26% compared to 25%) and involved them in how it spends money (48% compared to 20%).

3.7 An interesting point is that when asked what had the most impact on people's everyday lives, from a choice of seven, the top three were media, Parliament and local people working together. These were chosen more often than local councils, charities and voluntary organisations and community organisations.

3.8 Based on the survey results from June this year there is an appetite and need for more participation in the democratic process. The Bill can support the Council to find new ways of empowering people and communities, learning from good practice across Highland and elsewhere. Having improved community planning in terms of joint working with public service organisations since 2003, the Bill can enable the evolution of community planning into communities' planning. By supporting more participatory democracy, members can be supported in their representative and community leadership roles.

4. Further opportunities to respond to the Bill

4.1 It will be important to continually review the provisions within the Bill as it progresses through Parliament and the implications for the Council. Some implications will not become clear until the guidance/regulations to support the

Bill are published.

- 4.2 The Local Government and Regeneration Committee is now taking oral evidence on the Bill. This will last until late November 2014. There are several community evidence sessions taking place across the country. One of these will be at Lochaber High School in Fort William on the 24 November 2014. The Committee will be holding a community engagement event during the afternoon (from 2.45pm until 4.15pm) to hear the views of individuals and organisations active in the community. Later in the evening (5.15pm until 8pm) the Committee will hold a formal meeting where it will take evidence from invited witnesses on the Community Empowerment Bill. It is anticipated that the Council will be invited to give formal evidence. Should any Member wish to attend the afternoon community event or be in the public gallery for the Committee meeting, you must book by contacting lgr.committee@scottish.parliament.uk.
- 4.3 The stage 1 report on the Bill is likely to be published by mid-January 2015 with the first stage debate taking place in late January or early February 2015. Parliament will agree the dates for stages 2 and 3 after the end of stage 1 consideration.

5. Implications

5.1 Resource Implications:

COSLA is lobbying the Government to ensure that the Bill is cost neutral for Councils. The financial implications identified so far include difficulties in meeting annual targets for capital receipts from the sale of land and buildings if a community seeks ownership or leases at below market value, requests for funding to support community right to buy and any costs associated with publishing reports. Staff time will be needed to design new processes and to support capability within some communities to own and/or run buildings and services. Building organisational capacity to empower communities will be supported through awareness raising, training and peer support.

5.2 Legal and risk Implications:

This report details the requirements of the Bill, where these replace current legislation and link with other legal requirements such as the Equality Act. By planning for the implications of the Bill the risk of non-compliance is reduced.

5.3 Equalities Implications:

The responses to consultations on the Bill have highlighted awareness that some community groups need more support than others to be involved in decisions affecting them and to have their voices heard. This is aligned to the Equality Act.

5.4 Climate Change/ Carbon CLEVER Implications:

The emphasis of the Bill is on local solutions and these should enable lower carbon choices for configuring services, for maintaining local buildings and making good use of land. Where possible the requirement to publish reports should be met through the website to avoid costs and carbon emissions associated with paper copies.

5.5 Gaelic Implications:

As with all areas of Council policy, in the future groups will be able ask to participate in any area of Gaelic policy/service delivery if they feel they are able to improve the service outcome. All published reports will comply with the Council's policy in Gaelic translation.

5.6 Rural Implications:

It will be important to ensure that all groups across Highland, regardless of their location, are equally empowered by the legislation. Currently most community ownership of buildings and services are found in rural locations.

6. Recommendations

6.1 Members are asked to note:

1. The key provisions contained within the eight parts of the Community Empowerment (Scotland) Bill as introduced, with enactment expected by summer 2015.
2. That most Bill provisions can be seen as a continuation of current practise, with implications mainly about the pace of change and the design of new processes. Some of these will have resource implications. Some implications will not become clear until guidance and regulations are published.
3. The opportunity to provide oral evidence on 24th November in Fort William as set out in paragraph 4.2.

6.2 Members are asked to consider:

1. The officer evidence submitted during the pre-referendum period to the Local Government and Regeneration Committee and agree whether any other points need to be raised as the Bill progresses through Parliament.
2. How the Council's role in leading, promoting and supporting community empowerment can be enhanced by the Bill, building on the Council's values, Programme, voter participation action plan, CPP priorities and feedback from the Citizens' Panel on the appetite for democratic participation. The timing of the publication from the Commission on Strengthening Local Democracy and the Smith Commission is supportive, and feature as a separate item for this Council meeting.

Designation: Head of Policy and Reform

Date: 14-10-14

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Cross service contributions on the written evidence also provided by Stewart Fraser, George Hamilton, Graham Bull, Robbie Bain, Helen Ross, Phil Tomalin, Fiona Palin and Emma Taylor.

Community Empowerment (Scotland) Bill Local Government and Regeneration Committee

The Highland Council Evidence

NB a response from officers and not considered by elected members at this time.

Highland Council officers welcome the opportunity to provide written evidence to the Local Government and Regeneration Committee in respect of the Community Empowerment (Scotland) Bill. The Council has previously supported the aims and objectives of the Bill and envisages that this legislation will have positive impacts across the range of areas it provides for.

Officers are pleased to see a number of the points the Council made during the consultation phase taken on board in the drafting of this legislation. This includes:

- The focus on outcomes and the importance of all relevant partners contributing to community planning.
- A core list of public bodies to be involved while enabling flexibility to include others and the ability for the Community Planning Partnership (CPP) to consider how best to enable the participation of all partners within the CPP's governance arrangements..
- Definition of community body – it is helpful that attempts have been made to simplify the various definitions.
- Community Right to Buy – the inclusion of Community Right to Buy within the Bill will go a long way to promoting community ownership and the benefits that can result.
- Community Participation – the legislation now provides for public service authorities to decline multiple requests for the same outcome.
- The flexibility for public authorities to extend the period in which community bodies have to submit an offer, reflecting the need to be response to the needs of individual groups.
- Asset transfer decision review - that it would not be appropriate for an external body to review any decision taken by a Local Authority but now includes a process for Local Authorities to review their own decisions.
- The definition of allotments – ensuring it is now broad enough to take in community growing.
- Size of an allotment plot – no specific size enables Local Authorities to use such a definition as appropriate to their area.

The Council's evidence focuses on 2 key areas:

1. Previously Drafted Legislation: Points of concern which we have previously highlighted and yet have not been taken on board. These remain of significant concern that we wish to note these once more.
2. Newly Drafted Legislation: Relating to those areas where draft legislation has not been previously seen and its current form causes some concern.
3. General Comments: in relation to the Equality Duty and Community Councils.

The comments outlined below are intended to be constructive to enable this legislation to be as effective as possible in its operation for both communities and public service authorities.

Part 1: National Outcomes

The inclusion of the requirement for Ministers to determine and publish national outcomes following consultation is welcomed. This will provide clarity not only of Government intentions but also provide a focus for public service providers, including public sector organisations. The proposals for reviewing outcomes and reporting performance appear sensible. The extent to which the provisions for national outcomes, their review and performance reporting will empower communities will depend on:

- what those outcomes are;
- how Ministers consult on them, the reach of that consultation and how they can demonstrate they have listened;
- the accessibility of performance information to a range of interests and community groups and how that can have meaning to individual communities.

Part 2: Community Planning

We welcome that the Bill as drafted reflects the Council's earlier feedback on: including a defined list of core public bodies to participate in community planning while providing flexibility to include other community bodies operating in the area; the engagement of partners to fit local CPP governance arrangements and with scope for partners to be involved in particular outcomes or all as the CPP decides; a focus on outcomes; emphasising the importance of all relevant partners contributing to community planning; and recognising that some community bodies might need more support to participate in community planning.

It is helpful to public sector organisations to:

- have a definition of community planning included and for it to mean improving the achievement of outcomes through public services delivered by a range of providers;

- have clarity on which core bodies are expected to participate in a community planning partnership while enabling flexibility over identifying other community bodies to include;
- enabling the CPP to decide how best to arrange their governance arrangements effectively and efficiently and for it to agree which partners may not comply or be involved in a particular theme.
- to be required to prepare, publish and review a local outcomes improvement plan as this is not dissimilar to the current practice for preparing Single Outcome Agreements;
- for the duty of facilitating community planning to be shared across the defined partners for community planning given the shared responsibility for delivering on outcomes;
- that the duties of community planning partners includes contributing funds, staff and other resources as the partnership decides, as this will make collaboration more meaningful and that this relates to achieving outcomes and enabling community bodies to participate; and
- that guidance for community planning will be issued and it will be consulted on.

It would be more helpful to public sector organisations and for empowering communities if the following amendments could be made:

- Under section 4(3) on the requirement for local outcomes to be consistent with national outcomes, a qualification or reference to 5.(4)(b) should be included. This relates to the need for local outcome improvement plans to take into account local needs and circumstances. Otherwise the legislation may be seen to be contradictory, particularly if national outcomes are cast in a narrow way. This could also disempower communities if national policies do not reflect the needs in a CPP area and are too top down.
- Third Sector Interfaces should be listed in the schedule of core bodies to include in community planning partnerships in schedule 1. This would not preclude the engagement of individual third sector bodies from participating in the community planning partnership because they can be included in a CPP's identification of other community bodies to involve. This would enable a better representation of the third sector in the CPP.
- Under section 4(8) the community bodies to include should only be those that are formally constituted. This provides more assurance of their aims, membership (and by default their representativeness) and governance arrangements. Given the support available from Third Sector Interfaces for community groups to be formally constituted this should not be a barrier to the involvement of appropriate groups. It also aligns better with the Bill's provisions for formally constituted groups to be able to participate in improving outcomes. Community groups that are not formally constituted would not be excluded from community planning processes and could e.g.

still be consulted as part of a CPP's normal consultation process, but that is different to being a community planning partner. We seek removal of the reference to community bodies not being formally constituted from the definition of community bodies as community planning partners.

- There needs to be clarity in the Bill on the external scrutiny and inspection regime for community planning. Given that the focus of community planning is for the improvement of outcomes, how this will be inspected and audited needs to be clarified along with information on any remedial steps that may need to be followed. This does not appear to be included at all in the Bill and in earlier consultation we have expressed our view that this needs to comply with the principles of the Crerar Review.

Part 3: Participation Requests

Section 14 and 15 – Definition of community bodies

Whilst the attempt to simplify the definition of community bodies able to submit a participation request is welcomed, it still appears overly complex. It is beneficial that there is now synergy between the definition of community body for both asset transfer requests and participation requests, however, it still appears confusing and is likely to be so for both public service authorities and more significantly, community groups.

Section 17 – Participation requests

The process set out under this legislation is a formal process, with a number of key steps. It is therefore surprising that the requirement to present a participation request in writing has been removed. It would appear appropriate, given the circumstances, that community bodies should outline their request and reasons for it in writing to ensure there is no misunderstanding.

Section 19 (5) – Participation requests: decisions

There is still a lack of clarity around the reasonable grounds for refusing any request.

General comment – Simple Guidance

In order to encourage communities to participate, the guidance accompanying the legislation should be written in simple language explaining what terms mean e.g. a definition of outcomes. This will be critical to ensure that groups are not only enabled legislatively, but are able to understand what they have been empowered to participate in.

Part 4: Community Right to Buy Land

Section 28 (3) (c) – Meaning of community

We are concerned about this provision - whereby any person may receive a copy of minutes of the meetings of the company, if the request is reasonable, within 28 days. There is a need for further clarity here. Does the provision apply to all meetings (sub-committees and AGM meetings, which may be available only after approval and once a year)? Is the provision concerned with the provision of approved minutes only or may it include draft minutes? Another concern here is what information may be withheld if any. There is a need for clarity here too.

Council officers would also wish to express concern that this provision may require a wide number of existing associations to change their articles of association. This is particularly significant given that this now must be done prior to the commencement of any process under the modifications made to Part 2 of the Land Reform Scotland Act.

Section 28 (7) – Meaning of community

This provision introduces flexibility for Ministers to prescribe the definition of types of area, other than defined by post code. Clarity around what is meant by 'type of area' should be provided. Perhaps an example would illustrate what the flexibility provided may achieve.

Section 31 – Procedure for late applications

Applications for late registration are becoming the norm (two in Highland in last month). Given the likelihood that the number of late registrations will increase, it is considered that existing hurdles regarding the requirement to demonstrate additional community support and that the registration would be strongly in the public interest are of themselves sufficient, without the new requirements suggested in the Bill.

Section 48 – Abandoned and neglected land

This section appears to introduce a significantly higher barrier to community ownership than is currently the case. There is concern that the requirement for an interested community to demonstrate that land has been abandoned (particularly in a rural setting) would be very challenging indeed.

General comment - Re-registration of an interest in land:

The potential amendments to Part 2 of the Land Reform Scotland Act have omitted to consider the re-registration of an interest in land. We would therefore suggest that there should be simplified arrangements for the re-registering of an interest in land provided that ongoing and continuing community support can be demonstrated. It is also suggested that registration should be extant for 10 years rather than 5 years. This is an issue that has been considered by the Scottish Government's Land

Reform Review Group and is one that Council officers would like to see included within the Bill before approval.

General comment – Mapping requirements for Part 2 of Land Reform Act

A further unfortunate omission is the Bill's failure to simplify the onerous mapping requirements which currently exist. Council officers would strongly recommend that it should not be necessary to detail every sewer, line or watercourse, fence, dyke or ditch in order to demonstrate the area of land which is of interest. This is another point considered by the Land Reform Review Group.

Part 5: Asset Transfer Requests

Section 52 (1) – Asset transfer requests

There is no current provision within the legislation if more than one community transfer body makes an asset transfer request (ATR) in connection with the same or similar piece of land/property either:

- a) at same time, or
- b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made).

Provision/guidance will be welcomed for dealing with this eventuality either within the legislation or the regulations.

Consideration should also be given within the Bill/regulations to prescribing some form of period of 'advertisement' (ie. a fixed period of time and place) to allow potential interested community bodies to express interest in an asset transfer of a particular property. This will allow a) multiple requests to be progressed and considered at the same time; b) will allow equal opportunity between different community bodies to prepare and raise a request, and c) will avoid requests being submitted very late in a property disposal or other asset transfer process thereby extending the period over which the authority is required to retain a vacant and surplus property.

Section 52 (4) (d) – Asset transfer requests

In considering any ATR, the relevant authority must take into account whether the transfer will promote or improve: (as section 55(3)(c))

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

It is therefore recommended that this requirement should also be applied at 52 (4) (d) and that any community transfer body should specify and evidence within its ATR how its proposal will promote or improve and deliver the five requirements outlined above. The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits to the community, and how these link in with the Aims and Objectives of the Relevant Authority. Ideally such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed).

Section 53 (2) (b) - Community transfer bodies and ownership of land

The legislation, as currently proposed, does not deal with or address the asset transfer requirements between the 'company' (ie. the original community transfer body benefitting from the original (below market) asset transfer from the Relevant Authority) and the successor (ie. another community transfer body, or charity).

What would prevent a successor community asset transfer body or charity from selling a public sector asset, originally transferred at below market value to the original company, on the open market and receiving capital receipt? How will the public pound be protected in this scenario?

There is a need to put safeguards in place, either within the legislation or regulations to ensure that the successor owner (ie. another community transfer body, or charity) benefitting from the asset transfer promotes or improves (as section 55(3)(c)) and delivers:-

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

Section 55 (3) (c) – Asset transfer requests - decisions

As outlined above (s52(4)(d)), the Community Transfer Body Request should specify in its request how its proposal will promote or improve and deliver :-

- (i) Economic development
- (ii) Regeneration
- (iii) Public Health
- (iv) Social Wellbeing, or
- (v) Environmental wellbeing

The ATR should evidence how the proposal and each of the above criteria will promote, improve and deliver the benefits, and how these link in with the Aims and

Objectives of the Relevant Authority. Such evidence should be SMARTA (ie. Specific; Measurable; Attainable; Results-Orientated; Timebound; Agreed). This will assist the relevant authority to appropriately and fairly assess any ATR.

Section 55 (5) – Asset transfer requests - decisions

This removes the discretion of the (local) authority to seek a Best Value outcome to a property disposal, and thereby potentially foregoing a capital receipt that could be reinvested/recycled through its capital programme to deliver improved public services.

The Bill does not favour/encourage asset transfers at market value, and may, by stipulating that an ‘authority must agree to the request,’ inadvertently encourage ATRs at below market/nominal value.

Given the above, we would query whether other aspects of legislation require to be repealed to reflect this.

Further guidance (including in the regulations) would be helpful in this area.

Section 55 (6) – Asset transfer requests - decisions

As outlined above, provision or guidance is required, either within the legislation/regulations, should more than one community transfer body make an asset transfer request (ATR) in connection with the same or similar piece of land/property either:-

- a) at same time, or
- b) at different times (ie. the relevant authority is already responding to one ATR and another ATR is made?)

How will different ATRs be assessed to ensure equality and objectiveness between different proposals?

How will different ATRs submitted at different time intervals, possibly with different development and funding timescales be assessed and progressed?

Many (surplus and vacant) properties continue to attract on-going revenue costs (eg. rates; rent; utility costs; maintenance; security/vandalism costs) for the duration that they are retained, as well as having a potential capital asset value that could, upon generation of a capital receipt through an open market disposal, be reinvested/recycled through its capital programme to deliver improved public services.

Provision is required within the legislation or regulations to take account of these issues.

See also 56 (3) and (7) below.

Section 55 (9) – Asset transfer requests - decisions

It will be vital that the ‘Relevant Authorities’ should be consulted and given the opportunity to comment on the regulations and the procedures within the regulations to ensure that they are pragmatic and achievable.

Section 56 (3) – Agreement to asset transfer request

There are extended time periods prescribed within the Bill:

- a) the period in which an offer is to be made (ie. minimum 6 months); and
- b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) - also having regard to the requirements of 55 (5))

This may well entail the relevant authority retaining vacant and surplus property for extended periods of time that could otherwise:-

- i) be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development;
- ii) be used to generate a capital receipt through an open market disposal, that could be reinvested/recycled through its capital programme in to delivering improved public services;
- iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc. for extended periods of time.

Section 56 (4) (ii) – Agreement to asset transfer request

Clarification/guidance may be required regarding what is a ‘reasonable time’.

Section 56 (7) – Agreement to asset transfer request

As outlined at section 56 (3), there are extended time periods prescribed within the Bill:

- a) the period within the decision notice in which an offer is to be made (ie. at least 6 months) (section 56 (3)); and
- b) period of 6 months beginning with the date of the offer (or such longer period agreed/prescribed) (Section 56 (7)) - also having regard to the requirements of 55 (5)).

This may well entail the authority retaining vacant and surplus property for extended periods of time that i) could otherwise be disposed of at market value and thereby contributing through redevelopment/recycling to the creation of local employment/economic (re)development; ii) generation of a capital receipt through open market disposal that could be reinvested/recycled through its capital

programme in to delivering improved public services; iii) could cause blight and attract anti-social behaviour in local communities whereby properties are left vacant, boarded up etc for extended periods of time.

Section 57 (2) - Prohibition on disposal of land

The inclusion of a prohibition on the disposal of land during the relevant period and the timescales specified with the Bill (Sections 56 (3) and (7)) may stifle or deter local/national business entrepreneurialism and inward investment that could otherwise contribute through property redevelopment/recycling to the creation of local employment/economic (re)development.

Section 59 Review by local authority

Council officers welcome that the Bill now provides for Local Authorities to review their own decisions as opposed to an external body. However, the regulations which Ministers will prescribe need to ensure they take account of Local Authority standing orders and existing procedures for reviewing decisions taken. It will therefore be important for Local Authorities to be consulted upon any regulations.

Section 61 (1) (b) – Power to decline certain asset transfer requests

This may require Authorities to keep registers and records of ATRS received in order to ascertain whether new requests relate to previous asset transfer requests.

Part 6: Common Good Property

General comment – Bodies to consult with

A concern which the Council raised during the development phase of the Bill was the extent of the consultation proposed. The proposed definition of 'Community Bodies' in terms of the Community Empowerment(Scotland) Bill is extremely broad and would appear to be an unnecessarily onerous task and one open to interpretation. As also noted within the Community Planning section of the Bill, the definition of community body applied in this section also includes unconstituted bodies which would appear inappropriate. A constitution provides assurance of an organisation's aims, membership (and by default their representativeness) and governance arrangements. Overall however, we would suggest it far more appropriate to consult *only* with Community Councils, as proposed, as representatives of their communities. This would require a change at 22 (5) and 24 (5).

The Highland Council has responsibility for administering ten different Common Good Funds (Cromarty, Dingwall, Dornoch, Fortrose and Rosemarkie, Grantown, Invergordon, Inverness, Kingussie, Nairn and Tain). In relation specifically to Community Councils, the current wording in the Bill would require Highland Council

to consult with all 156 Community Councils in its area on the establishment of a register and each disposal of property across any of the funds. We would therefore strongly suggest that the wording be amended to read “consult only with Community Councils that represent the inhabitants of the areas to which the Common Good related prior to 16 May 1975.”

Part 7: Allotments

Section 70 – Request to lease allotment

The draft legislation states ‘*any person may make a request to the local authority in whose area the person resides to lease an allotment from the authority*’ 70 (1). With an area the size of Highland the legislation still does not allow for a geographical approach within the Authority to ensure allotments are developed and allocated within an acceptable (defined) geographical limit from the requester’s home.

Section 70 – Request to lease allotment

The bill only refers to local authority owned or leased land. The legislation still does not recognise the role of other statutory bodies by placing duties on all public sector land owners to make suitable surplus land available. We have evidence that some public sector agencies are however approaching this on an ad hoc basis. The Forestry Commission for instance has encouraged, assisted in the development of; and leased land for allotments directly to allotment associations.

Section 72 – Duty to provide allotments

There is still no provision for the Local Authority to limit the number of sites that must be provided simultaneously across the entire Local Authority area. This should be viewed in the context of the Highlands overall allotment strategy, budget, priorities and man power to meet the duty effectively.

General Comment – Equalities

It would be appropriate for the Community Empowerment Bill to make direct links to the general equality duty of the public sector equality duty set out in section 149 of the Equality Act 2010. The connection should recognise that different groups have historically been under-represented in community activities or faced barriers to participation - the Empowerment Bill is an opportunity to help mainstream the duty into the scope of its powers.

Those subject to the equality duty must, in the exercise of their functions, have due regard to the need to:

- *Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.*

- *Advance equality of opportunity between people who share a protected characteristic and those who do not.*
- *Foster good relations between people who share a protected characteristic and those who do not.*

Having due regard for advancing equality in particular involves:

- *Removing or minimising disadvantages suffered by people due to their protected characteristics.*
- *Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.*
- *Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.*

The Act states that meeting different needs involves taking steps to take account of disabled people's disabilities. It describes fostering good relations as tackling prejudice and promoting understanding between people from different groups. It states that compliance with the duty may involve treating some people more favourably than others.

General Comment – Community Councils

We would once again like to take the opportunity to register our disappointment at the noticeable absence within the Bill of any legislation relating to Community Councils. Given the extensive work over recent years in considering the roles and responsibilities of Community Councils, it would appear a missed opportunity not to address this within the current Bill where it would sit so comfortably. Community Council legislation primarily dates to the 1973 Local Government Act. The current community context has changed dramatically, as evidenced by this Bill, and therefore it is at odds with the current direction of community empowerment in general not to consider Community Councils given that they are a key building block within our communities.

There is one critical anomaly that urgently requires review and legislation to address it. This Council has consistently lobbied on the issue of Community Councils and the need for legislation to be amended to enable these bodies to have incorporated status. Some Community Councils already own assets but without a change in legislation, the liability and risk will continue to lie with individual office bearers. This is unhelpful we would urge that this particular element is considered as one component of the Bill. It should be considered in the context of an enabling provision for those Community Councils keen to have such a role. This would empower those Community Councils without expecting or compelling all Community Councils to take on this role.

It is important to emphasise that this would not change the fundamental definition of the role of a Community Council but provide protection for individual office bearers and enable any Community Council who would like to take a greater role within their community to enable them to do so.

Of course Community Councils can set up Community Trusts or alternative bodies to take on these roles, however, as noted in previous consultations, within small communities this can result in a lack of interest in a Community Council with individuals more interested in participating in the activities of the Trust.

A strength of Community Councils in terms of owning assets would be that their operation is governed by strict rules and regulations overseen by the Local Authority.

The Bill is about empowering communities and Community Councils are a key building block within our communities. Amending the unincorporated status of Community Councils would greatly assist and empower many Community Councils who wish to play a greater role within their communities. This is an ideal opportunity to address this challenge within an appropriate legislative process and we would urge this element to be included within the Bill.

Highland CPP Development Plan 2014 to 2018 – agreed by the CPP Board October 2014

Area for improvement	Source	Improvement Activity	Timescale
Partnership Performance Management and reporting	Quality Assurance Panel 2013 CPP Board self-assessment 2014 Audit Scotland	<ol style="list-style-type: none"> 1. Refreshed delivery plans for each theme within the SOA 2. Continue quarterly performance reports to Board 3. Avoid duplication in reporting performance – proposals agreed with Responsible Officers concerned 4. Await outcome of CPP performance indicators project (SG/IS) 5. Improve performance reporting to the public on progress made in the CPP 6. Self- assessment followed up in theme groups for economic growth, health inequalities & physical activity and the environment. 	<ol style="list-style-type: none"> 1. Oct 2014 2. Quarterly 3. Dec 2014 4. TBC 5. Sept 2015 6. Dec 2015
Maximise the use of collective resources to achieve best outcomes, demonstrating a shift to prevention and the re-allocation of resources between CPP members where this represents best value.	CPP review of process priorities CPP Board self-assessment 2014 National Community Planning Group Audit Scotland	<ol style="list-style-type: none"> 1. Chief Officers Group identifies group of officers to make proposals 2. Budget proposals shared and cumulative impacts identified, partners views influential 3. First report from Group to Board 	<ol style="list-style-type: none"> 1. June 2014 2. Feb 2015 3. March 2015

Engage in dialogue with communities in order to empower them to participate in service planning and delivery	<p>CPP review of process priorities</p> <p>Quality Assurance Panel 2013</p> <p>Community Empowerment legislation</p>	<ol style="list-style-type: none"> 1. Continue review of how District Partnerships might be forums for local community planning and improves alignment between SOA priorities and local needs and intervention. Prepare proposals for the Board 2. Begin quarterly up-dates from the Community Learning and Development Strategic Partnership 3. Explore the scope for participatory budgeting 4. Report implications from Community Empowerment Legislation to Board 	<ol style="list-style-type: none"> 1. March 2015 2. Dec 2014 3. March 2015 4. March 2015
Collaborate on workforce planning and skills development to meet Highland needs, in the context of the Highlands and Islands Skills Investment Plan and our roles as major employers	<p>CPP review of process priorities</p> <p>Audit Scotland</p>	<ol style="list-style-type: none"> 1. Chief Officers Group identifies group of officers to make proposals 2. SDS presentation to Board 3. First report from Group to Board 4. Review extent to which the CPP promotes collaboration – does the CPP encourage, support, and reward collaborative behaviour amongst staff? <i>Task to be allocated.</i> 	<ol style="list-style-type: none"> 1. June 2014 2. Dec 2014 3. March 2015 4. June 2015
Tackle deprivation and inequalities including by improving access and connectedness for communities	<p>CPP review of process priorities</p>	<ol style="list-style-type: none"> 1. Being taken forward through the health inequalities group. 2. Quarterly progress/performance reports to the Board 	<ol style="list-style-type: none"> 1. From Oct 2014 2. From Dec 2014
Value and be positive about Highland life to attract people, jobs and investment.	<p>CPP review of process priorities</p>	<ol style="list-style-type: none"> 1. To be woven through CPP activity, events and promotions. 2. Communications officers from across the CPP liaise on publicity 	<p>Ongoing activity</p>

