

The Highland Council

3rd September 2015

Agenda Item	14(a)
Report No	HC/37/15

Community Empowerment (Scotland) Act 2015 – implications for the Council

Report by Head of Policy and Reform, Highland Council

Summary

This report summaries the parts within the Community Empowerment (Scotland) Act 2015 and describes the early implications for the Council. Members are asked to note these and the work in place so far and that the Act supports the need for new arrangements for localism.

1. Background

- 1.1 In June 2014 the Community Empowerment (Scotland) Bill, was introduced to the Scottish Parliament. The Council previously welcomed the proposed Bill and provided feedback to two early consultation periods, provided written evidence at Stage 1, considered the implications of the Bill at the Council meeting in October 2014, gave oral evidence in Fort William in November 2014 and had the opportunity with community planning partners to discuss the Bill with the Minister for Local Government and Community Empowerment in December 2014. The Bill was passed in June 2015 and received Royal Assent in July 2015. This report identifies some of the early implications for the Council now that the legislation is finalised.
- 1.2 The Act places new duties on the Council and its partners and provides new rights for community bodies. The Scottish Government advises that the Act will come into effect by July 2016 and different parts of the Act are likely to have different start times from then. Statutory guidance is being prepared to support the implementation of the Act. There will be consultation on the guidance.
- 1.3 The Act 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
- It provides a framework for empowering communities including:
- through the community control of land and buildings;
 - meaningful community participation in public services, including in decisions about resources; and
 - making community planning a statutory duty for more public bodies, for them to be held to account better and to share resources and support community participation.

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

- 1.4 The Act recognises that empowerment is not the same as consultation or engagement; empowerment is about communities leading change for themselves. A community refers to a community based on common interest, identity or geography. Specific provisions are made in the Act to define community bodies, depending on the nature of their participation (e.g. more requirements are made when they seek to use their community right to buy or own assets).
- 1.5 The Council's programme Highland First includes commitments to strengthen local democracy, to empower communities and to make asset transfers simpler.

2. What the Act means for the Council

2.1 The Community Empowerment Act has nine parts. The key requirements of the Act and the implications are provided below. As Statutory Guidance becomes available there will be greater clarity on processes to be followed and the start dates for different parts.

2.2 Part 1 - National Outcomes

The Act requires future Governments to determine national outcomes which must have regard to reducing inequalities arising from socio-economic disadvantage. These national outcomes must be consulted on over a 40 day period and the Parliament is to be advised on how the consultation feedback has been considered. The national outcomes must be published and reviewed within a 5 year period. Progress nationally in achieving the outcomes is to be monitored, reported and published.

2.3 Implications for the Council

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

2.4 Part 2 - Community Planning

The Act makes significant amendments to community planning, clarifying its purpose, putting it on a statutory footing with new duties for more partners and shifting from consultation with, to participation of, communities. The new requirements are summarised below.

1. The purpose of community planning is improvement in achieving outcomes through the services delivered via the listed public bodies. The CPP must act to reduce inequalities of outcome resulting from socio-economic disadvantage.
2. Councils and 16 public bodies² listed must carry out community planning. They form the Community Planning Partnership (CPP).

² For the Highland area the partners are; Police Scotland; Scottish Fire and Rescue Service (SFRS); NHS Highland; HIE; SNH; the Cairngorm National Park Authority; UHI; Historic Environment Scotland; regional college Boards; SEPA; the Scottish Sports Council; Skills Development Scotland; HITRANS; and Visit Scotland.

The CPP can agree how partners comply with their duty (e.g. in a particular outcome rather than in them all). Each must contribute such funds, staff and other resources as the CPP considers appropriate.

3. Community planning is a shared duty to be facilitated by 5 of the listed bodies, for Highland they are the Council, NHS, HIE, Police Scotland and SFRS. They can jointly apply to Ministers to establish a corporate body.
4. The listed public bodies must work together in this duty and with any community body that wishes to take part and especially securing the participation of community bodies that represent the interests of people experiencing inequalities resulting from socio-economic disadvantage. Community bodies do not need to be formally constituted to take part.
5. CPPs must prepare and publish a local outcomes improvement plan (LOIP). It must be evidence based, detail the improvement planned, including timescales, and be consulted upon. Progress is to be monitored and published annually covering the extent of improvement and the extent to which community bodies have participated and been assisted to do so. The LOIP is to be reviewed, revised and published.
6. The CPP must identify localities within its area (regulations will specify the requirements further). The CPP must compare the outcomes experienced by people across localities within the CPP area and with elsewhere in Scotland to identify where poorer outcomes and disadvantage are found. For these areas a locality plan must be prepared and published. CPPs can choose to have plans for other localities. Locality plans are to include local outcomes to be achieved, with timescales and be consulted upon. Locality plans are to be reviewed and published. Locality plan progress reports are to be published annually.

2.5 Issues for the Council

The new provisions build on the current arrangements in place for the Highland CPP and its work on the Single Outcome Agreement. Key differences that need early action with partners are:

1. As it is no longer the sole responsibility of the Council to facilitate community planning, the five listed bodies in the CPP will have to agree how to share this responsibility.
2. The development of local community planning provides an opportunity for trying out new partnership arrangements, including ensuring that all listed partners and relevant community bodies take part appropriately.
3. The focus on reducing inequalities and on locality planning in areas where the poorest outcomes are found will affect where and how the CPP targets its efforts and resources and how it ensures participation with the communities affected. Further guidance is expected, and the CPP can learn from the new approaches in areas of urban deprivation

and take forward its work on identifying which rural communities may need the most support.

4. This locality focus, along with the need to make sure that community bodies are involved in community planning, heightens the need for effective local community planning arrangements and for Members to be fully involved.
5. Guidance will clarify when the first LOIP is due. Work is to begin on understanding the links across the various statutory plans required of partners (the links between the Local Development Plan and the Community Learning and Development Plan were identified with partners recently).

2.6 **Part 3 - Participation Requests**

The Act enables a community body (including community councils) to request to take part in an outcome improvement process. The intention is to provide a new way for communities to initiate dialogue with public bodies in their own terms, with scope to raise issues that might not be open to consultation. To do this they need to say what the outcome is, why they should take part and include a description of their expertise and what improvement they expect their involvement to make.

2.7 Requests can be made to 11³ of the 16 listed bodies and can be made to more than one body at the same time. In responding to participation requests consideration has to be made of whether it will improve economic development, regeneration, public health, social wellbeing or environmental wellbeing, will reduce inequalities, will involve people experiencing disadvantage, and any other benefits.

2.8 Requests must be agreed unless there are reasonable grounds for refusal. This does not automatically mean that the community body's proposal must be agreed to, but it has to be heard and documented. Where requests are declined repeat requests cannot be made within a two year period. Where requests are agreed the process for improving the outcome is to be set out including how the community body and any others are to participate. Community bodies can make representations about the process within a 28 day period and the process can be modified.

2.9 Once initiated the process should conclude within 90 days. When the process is complete a report must be published by the public body/bodies affected detailing the process, what changed as a result of it, how the community body influenced the change and how they are to be kept engaged. In addition the views of the community body about the process and its view of its involvement are to be included.

2.10 All public bodies with this duty are to publish an annual report by 30th June (for the previous financial year) on participation requests received, agreed or

³ The 11 listed bodies are: Board of a college of further or higher education; Health Board; HIE; Council; National Park Authority; Police Scotland; SFRS; SEPA; SNH; HITRANS and for CPPs outwith Highland, Scottish Enterprise.

refused, the number leading to improvement, how requests are promoted and how community bodies were supported to participate.

2.11 Implications for the Council

Regulations and guidance on participation requests are expected, including on appeals. The principle of encouraging community bodies and individuals to be involved in improving outcomes is not new with current practise found in e.g. self-directed support for people with care needs, several GIRFEC processes, the work of community health co-ordinators, the Council's Community Challenge Fund and the LEADER programme. The Act does mean that we need a clear process for encouraging and dealing with participation requests:

- For community bodies to use;
- For our internal processes; and
- For dealing with requests that affect more than one public body.

2.12 Currently work has started with CPP partners to develop a single process for community bodies in the Highlands that can be used for any of the public bodies affected. Further reports will be made on this subject as this work progresses and guidance becomes available. Having good locality arrangements in place will be helpful for considering participation requests.

2.13 **Part 4 - Community Right to Buy**

This section of the Act amends the Land Reform (Scotland) Act 2003. It extends the community right to buy to all of Scotland (urban and rural) even if the owner does not want to sell⁴, subject to Ministerial approval, and it includes abandoned and neglected land. It should make the purchase of land and buildings in private and public ownership easier, although the asset transfer route (below) is likely to be easier for community bodies seeking to own public assets.

2.14 Specific provisions are made about:

- the nature of the community body with a right to buy (which go further than those required for a community body to participate in community planning and make participation requests);
- the process for registering an interest and making applications;
- the processes relating to valuation, consent, completion, compensation, appeals and mediation;
- the ballot process.

2.15 Implications for the Council

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. In Highland over 60 community owned assets (mostly land and including forests) have been assisted by HIE and the Council has

⁴ This is dependent on the current land use causing harm to the environmental wellbeing of the community and an adverse effect on the lives of people living in the community. Exclusions apply.

supported the community ballot process. Increased capacity in HIE and the Council to respond to additional requests is likely to be needed.

2.16 Part 5 - Asset Transfer Requests

The Act provides for community bodies to request ownership, lease, management or use of publicly owned buildings or land whether or not they are available for sale or deemed surplus to requirements by the owning body. It applies to assets held by 17 listed bodies⁵. The initiative is placed with community bodies and they are to specify the benefit that would come from the asset transfer.

2.17 The asset owning body is to consider whether the transfer would promote or improve economic development, regeneration, public health, social wellbeing or environmental wellbeing and would be likely to reduce inequalities of outcome and any other benefits (in keeping with participation requests). In addition the public body must encourage equal opportunities in their decision-making and requests must be granted unless there are reasonable grounds for refusal.

2.18 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. Public bodies are encouraged to take the wider benefits of community proposals into account when considering disposal at or below market value. The price for sale can take into account the need to receive a certain level of capital receipts to fund other developments and the benefits of those developments can be taken into account in comparing benefits to a disposal at less than market value.

2.19 Public bodies must also respond to information requested about the assets it holds. They must also establish and maintain a register of land that is owned or leased by them. Annual reports are also to be published (by 30 June for the previous financial year) setting out the number of requests received, agreed to and refused, the number that resulted in transferring ownership or leases, the number of appeals made and their outcome, the action taken to promote asset transfer requests and the support offered to community bodies in making requests.

2.20 Community bodies have the right to appeal to Ministers where requests are refused; although for Councils a separate initial review process by Councillors is required with a further appeal to Ministers available. Repeat applications can be declined within a two year period. Further regulations on the process for applying for asset transfer, responding to applications and Council review processes are expected.

⁵ The public bodies affected by this part of the Bill are: Boards of management of a college of further education and of further and higher education; the British Waterways Board; the Crofting Commission; a Health Board; HIE; a local authority; National Park Authority; Scottish Courts and Tribunals Service; Scottish Enterprise; SEPA; SFRS; Scottish Ministers; SNH; Scottish Police Authority; Scottish Water; a Special Health Board; a Regional Transport Authority. Provisions are included for supporter involvement in football clubs.

2.21 Implications for the Council

The Council has experience of asset transfers⁶. As highlighted to the Council in October 2014, our experience is 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, while at other times the asset transfer process takes too long for those groups able to move more quickly.

2.22 Given the experience and resources that exist across the CPP, the CPP has agreed that it will design a common process to comply with the Act and to support community groups in a consistent way. The aims are to:

- design a transfer process that makes the process clear, transparent and with a view to enabling more transfers;
- support communities through the process, before, during and after transfer and recognising that for some communities, leasing may be a route to ownership in the longer term.

This work was initiated recently and further reports will be brought to Members and this will reflect new guidance.

2.23 In terms of having a list of property and land that the Council owns and leases to be available for public inspection; we should be able to satisfy this requirement from our map based property database. Further guidance will clarify whether this is sufficient.

2.24 **Part 6 - Common Good Property**

The Act aims to increase transparency about the existence, use and disposal of common good assets, and to increase community involvement in these processes. It requires Councils (as trustees) to establish and maintain a common good register, listing all common good property, and to make this publicly available free of charge including on a website. When establishing this register, Community Councils and other community bodies (whether or not formally constituted) 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.

2.25 Implications for the Council

For Highland Council this means consulting with those community councils and community bodies with a known interest within the locality to which the common good applies and not all such bodies across the whole Council area (this was an amendment made at the Council's request at Stage 2 of the Bill). Registers of Common Good property currently exist and arrangements will be made for these to be published on the Council's website. Decisions to sell or change common good property will need to reflect the views of groups consulted and longer timescales for decisions will need to be programmed.

2.26 **Part 7 – Allotments**

⁶ Since 2010 the Council has transferred 24 assets into community ownership, including 10 village halls. Most transfers to communities take place for £1 (with income of up to £1.975m foregone) and arise from communities approaching the Council about vacant properties.

The Act repeals allotments legislation in whole or in part dating from 1892 to 1950, 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.

2.27 New provisions in the Act are:

1. Councils must keep a waiting list of those requesting to lease an allotment and acknowledge such requests in writing within 14 days.
2. The Council must take reasonable steps to provide more allotments within reasonable distance for the applicant if the list becomes too long (i.e. when the number on the list is more than half the total number of allotments owned and leased or when the applicant has waited for more than 5 years).
3. The Council must make regulations about the allotments in its area covering their allocation, rent, services provided, cultivation and maintenance, buildings on site, keeping livestock, landlord inspections, acceptable use and access, liability for loss or damage and sale of surplus produce. Public notice of the regulations is required and representations are to be considered.
4. The Council will need consent of Scottish Ministers to sell or change the use of land used for allotments.
5. A food growing strategy must be prepared and published for the Council area within 2 years of this part of the Act coming into force. This must identify the land for allotments and community gardening and how this will be increased. The strategy must be reviewed every 5 years.
6. An annual allotments report must be published each year. The first report will be due a year after this section comes into force. This must set out:
 - a. the location and size of each allotment site;
 - b. those accessible for a disabled person;
 - c. the number of allotments on each site;
 - d. whether leased to one person or more;
 - e. the lease period for each site;
 - f. the rent payable and income and expenditure for sites;
 - g. how rents are determined;
 - h. the number on the waiting list (and those waiting for more than 5 years); and compliance with the allotments duty;
7. Provisions are made for:
 - a. the removal of unauthorised buildings from allotment sites;
 - b. for subletting and delegating the management of allotment sites to e.g. an allotment association;
 - c. tenants' rights;
 - d. the termination of leases and associated compensation for disturbance, deterioration of the allotment and loss of crops.
 - e. promoting allotments; and
 - f. providing meeting space in Council premises free of charge for allotment tenants on request (if made in writing and at least a month before the meeting proposed) with a response to be provided within 14 days.

2.28 Implications for the Council

The Council currently supports allotment gardening⁷ and has a food growing strategy in place. The Act will mean new work is required especially on identifying sites and in annual reporting.

2.29 **Part 7A – Participation in public decision-making**

Introduced at Stage 3 this section aims to promote and enable participation of people in the decisions about public services including the allocation of financial and other resources. It seeks to support capacity building in communities with a view that this will help to identify local needs and priorities better and for budgets to be targeted more effectively. Regulations are expected on which authorities are included, which of their decisions are affected and who should be able to participate in them.

2.30 Implications for the Council

One method of enabling public decision-making in resource allocation is participatory budgeting. This is being trialled in several localities over the next two years. Further guidance will clarify requirements and implications.

2.31 **Part 8 - Non-Domestic Rates**

The Act enables Councils to create localised business rate relief schemes to encourage businesses in the area.

2.32 Implications for the Council

Any local reliefs will need to be fully funded by the Council.

2.33 **Part 9 – General**

This covers the requirement for guidance on the Act to be published (for parts 2, 3, 5, 6, 7 and 7A) and the powers for subordinate legislation and regulations.

3. Conclusions and implications

3.1 The Council previously welcomed the Bill. The timing of the Act to consider how to ensure people and communities can be involved in decisions affecting them aligns with the Council's approach to support more local decision-making and with the CPP's review of local community planning arrangements. Many aspects of the Act require localism for implementation, whether it is about locality plans for those communities experiencing poorer outcomes, asset transfers, participation requests and local community involvement in common good property. Proposals for localism are reported separately to this Council meeting.

3.2 Legal implications: the Council must have regard to statutory guidance accompanying the Act. As this becomes available further reports and/or

⁷ 19 new allotment sites have been supported by the Council up from 9 in 2009. We work with allotment associations. We are aware of 33 community gardens. The Council is to target financial support for community growing initially in areas of multiple deprivation and supported by NHS community dieticians and local health coordinators.

briefings for Members will be provided to ensure compliance with the Act.

Resource implications: New work is required to introduce new processes (e.g. participation requests) or to improve current processes (e.g. asset transfer) and in both of these examples the CPP has agreed to take forward this work in partnership so that resources can be shared. For other areas of work e.g. supporting allotment gardening and involving people in decisions about public services we will need to re-prioritise work. Fuller resource implications will be clearer when statutory guidance is provided and timescales are confirmed.

Equalities implications: the Act brings a legal duty on the Government and CPPs to reduce inequalities arising from socio-economic disadvantage. Socio-economic disadvantage is often related to people's protected characteristics, for example people with disabilities are more likely to be unemployed, so the Act will help us to also meet our duties under the Equality Act.

Climate Change implications: The Act would support people and communities being involved in matters relating to building resilience to extreme weather events and in finding ways to reduce our carbon emissions.

Risk implications: The risk of non-compliance should be reduced by being aware of the implications of the Act and taking these forward with partners where that makes sense. It is not yet clear how the implementation of the Act will be audited or inspected as audits of community planning will have to be revised. New annual reporting requirements should enable any external scrutiny to be risk based.

Gaelic implications: none identified.

Rural implications: The Act applies to rural and urban areas of Scotland. The move to greater localism in Council decision-making and community planning arrangements should enable full consideration of rural issues and needs.

4. Recommendations

4.1 Members are asked to note:

1. That the Community Empowerment (Scotland) Act 2015 is now in place and that it brings new duties on the Council and its partners.
2. Early implications of the Act are identified in the report and these will be firmed up when statutory guidance becomes available, with implementation dates known by, and from, July 2016.
3. That preparatory work is underway with the CPP on some aspects of the Act and for other areas we will have to re-prioritise work.
4. The new rights for community bodies can be considered better with new arrangements for localism, with early proposals reported separately to this meeting of the Council.

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