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Towards Empowerment?

SCDC briefing on the Community
Empowerment (Scotland) Bill
and call for evidence

3%July 2014

Introduction

On 12 June 2014, Scottish Government published the Community Empowerment (Scotland) Bill, an important milestone on the path to new legislation, likely to come into force in the summer of 2015 after further consultation and deliberation. This SCDC briefing aims to:

- Describe the main changes that the Bill introduces
- Comment on these changes from a community development perspective
- Highlight what is expected to happen next, and how to engage with the process.

SCDC will be following the Bill's progress closely and will be submitting evidence to the Local Government and Regeneration Committee. In particular, we will focus our attention on the need for support to enable disadvantaged communities to benefit from provisions in the Bill.

The Local Government and Regeneration Committee has invited all interested parties to submit written evidence on the Bill, and has asked that the following questions are addressed:

1. To what extent do you consider the Bill will empower communities? Please give reasons for your answer.
2. What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions in the Bill?
3. Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?
4. Are you content with the specific provisions in the Bill? If not what changes would you like to see, to which part of the Bill and why?
5. What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?

SCDC is keen to hear the views of community development colleagues and community organisations on the Bill, in order to inform any contribution we make. You may also wish to submit your own evidence.

The deadline for submission of evidence to the Local Government and Regeneration Committee is **5 September 2014**. More information on how to submit evidence is contained in the Committee's [Call for Evidence](#) and we have provided links to further information at the end of this briefing paper.

We hope you find our briefing and discussion points useful.

About the Bill

The [Community Empowerment \(Scotland\) Bill](#) is in nine parts, each of which focuses on a different area of change. These provisions:

1. Strengthen the requirements to develop, consult on and establish a set of national outcomes
2. Make community planning a statutory function and a shared responsibility of specified public bodies
3. Provide a mechanism for communities to have a stronger voice in the way services are planned and delivered
4. Extend the 'right to buy' to the whole of Scotland, and allow communities to purchase neglected land even where the owner is unwilling to sell
5. Give community bodies the right to request to purchase, lease, manage or use land belonging to local authorities and certain other public bodies
6. Require local authorities to maintain a register of 'common good' property
7. Update and improve legislation on allotments
8. Allow councils to design their own local business rate relief schemes
9. Detail necessary changes and relationship to other legislation

Accompanying the Bill there are [Explanatory Notes](#) that aim to 'assist the reader ...and help inform debate' on the Bill. Contained within the Explanatory Notes is a Financial Memorandum, which indicates the likely financial implications of the Bill. More importantly, there is a [Policy Memorandum](#), which sets the Bill in the wider context of the general direction of public policy.

Our view is that it is important to consider the legislation in light of the spirit of the policy context to assess the extent to which legislation is likely to help bring about the policy changes desired by government.

This briefing gives our commentary on the policy memorandum and the first three proposals contained in the Community Empowerment (Scotland) Bill; strengthening outcomes, new duties for community planning and community voices in service planning and delivery, and concludes with some broader observations. At the end of our briefing there is information on the legislative process and links to other sources of information on other aspects of the proposed legislation.

Our starting point

SCDC supports the Community Empowerment (Scotland) Bill as a step in the right direction: the direction that gives communities more confidence that they will be heard, that they can set the agenda for change, and that they can acquire and use buildings and land for their own benefit.

But we need to be vigilant over which communities actually exercise these rights. If empowerment is a core value of policy it needs to be used to rebalance and not reinforce power relationships that contribute to disadvantage. The Bill will only succeed in empowering communities in this way if it can prevent already powerful interests furthering their advantage at the expense of marginalised and excluded interests unable to take advantage of the provisions of the Bill.

By its nature, the Bill contains wide ranging proposals for legislation under the title of community empowerment and, although we believe that some of the proposals in the Bill are genuinely empowering, in particular the extension of the community right to buy and the transfer of public sector assets, we would suggest that the title for the legislation is misleading.

Our view is that the proposals on new duties within community planning set out in the Bill will not directly facilitate community empowerment. Instead the Bill proposes enhanced duties for community planning which will not lead to the empowerment of communities unless they are properly used to continue to engage with communities, to act within a social justice value set, and to give social development and community empowerment the priority they need. Empowerment is not simply a matter of having rights to participate: although these rights are necessary, they are not sufficient.

Deprived or marginal communities remain so partly because they lack the power to make the case for the changes that they seek. For such communities the rights introduced in the Bill will not in themselves confer power or influence. For such communities, empowerment is better understood as a long-term, purposeful process that builds cohesion and confidence and establishes a social and organisational infrastructure. This process is reflected in the pillars of public service reform, in particular the 'decisive shift towards prevention', the logic of which is that investment in the building of resilient, sustainable and empowered communities will lead to better health, better social outcomes, and greater wellbeing.

In recognition of the tensions between those aspects of the legislation which are focused directly on empowering communities and those which are related to new duties for community planning, we suggest that, to avoid misinterpretation, the Bill should be renamed as, for example, the Community Empowerment and Community Planning (Scotland) Bill. We also propose that the next steps need to focus on ensuring that all communities are equipped and supported to take advantage of the arrangements set out in the legislative proposals, and we would encourage Scottish Ministers to consider actions to take this forward.

Community Empowerment and Engagement

The accompanying Policy Memorandum states that:

'The Scottish Government believes that Scotland's people are its greatest asset: they are best placed to make decisions about our future, and to know what is needed to deliver sustainable and resilient communities'

Turning this belief into practicalities, the Community Empowerment (Scotland) Bill proposes to reflect the policy principles of subsidiarity, community empowerment and improving outcomes through providing a legislative framework to:

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

The detail in the Bill confirms that the provisions do indeed fall within these two key aims, but we suggest that it is important to consider the *extent* to which these aims might empower communities, especially in respect of the new duties on community planning.

The logic of the provisions is that community planning will be strengthened and more clearly focused on outcomes; while the community empowerment element will essentially be the extent to which community 'voice in decisions that matter' would be strengthened. If the provisions of the Bill are to succeed in empowering communities we need to ask basic questions about the locus of power and the way in which it is to be channelled. Here, the policy memorandum distinguishes between community empowerment and community engagement, by arguing that:

'it is important that community voices are heard in public sector processes, but that this engagement differs from community empowerment, where communities lead change for themselves'

If this is the case it might be argued that the draft legislation implies an important shift in the relationship between communities and public services from recent years, but not necessarily a shift towards *more* empowerment. Until now, engagement was seen as a mutual relationship between communities and public agencies, as expressed in the National Standards for Community Engagement¹, which defined community engagement as:

'Developing and sustaining a working relationship between one or more public body and one or more community group, to help them both to understand and act on the needs or issues that the community experiences'

¹ <http://www.scotland.gov.uk/Resource/Doc/94257/0084550.pdf>

This definition of engagement is a much stronger statement than simply 'hearing community voices'. It clearly acknowledges that many communities, in particular disadvantaged and disenfranchised communities, are not always in a position to lead change for themselves as they do not always necessarily have the resources or confidence to do so.

While we welcome the provisions that better enable communities to take more control over land and buildings, and to have the right to request participation in outcome improvement processes, we have to question the extent to which these provisions, in isolation, will empower those communities that are excluded or marginalised, or who are unaware of the rights enshrined in the Bill.

As the Policy Memorandum (para 11) argues, community empowerment is a key plank of public service reform, and this should result in 'strong, independent and resilient' communities that are 'best placed to determine outcomes for local services' and, therefore, public service providers should fully engage communities in decisions about the design and delivery of services to achieve such outcomes.

This raises interesting questions about the anticipated relationship between 'empowerment' and 'engagement' in improving service delivery and other outcomes. If, in policy, effective engagement remains the critical factor for effective community planning, it could be argued that the Bill appears to downgrade the requirement to 'engage' (as in the Local Government (Scotland) Act 2003) to a less rigorous requirement to 'consult such community bodies as it considers appropriate' in preparing the local outcomes improvement plan.

Detail of the Bill

Part 1: National Outcomes

According to the Bill, the National Performance Framework is to be reviewed every five years. Part 1 of the Bill places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the “Scotland Performs” framework, and in doing so, ‘they must consult such persons as they consider appropriate’.

SCDC welcomes the move to place the requirement to plan for outcomes on a statutory basis as, fundamentally, this can support the establishment of more meaningful interventions and the measurement of change better than a target, or output driven approach. However, we have some concerns that, without a more robust requirement to engage and consult with a cross-section of community and civic interests, this could embed a centrally driven process, rather than support an approach that would seek to ascertain and reflect a wide range of opinion on priorities and expectations.

Public services and communities across Scotland are now familiar with the outcome-based approach to planning and delivery, and SCDC has encouraged adoption of this in relation to community development, promoting the need for a participatory outcome-focused planning approach with communities² to support a co-produced process of change. We believe that it is important for communities to be able to show that their work is consistent with, or complementary to, wider public interests, or to be able to make the case for their work where it is not complementary to wider community and public interests. Therefore it is important that they can show how their ambitions correspond to the national outcomes, provided that communities have had the opportunity to contribute to the shaping of those outcomes. However, it could be argued that, as described in the Bill, national outcomes seem to be very much under the control of government and public bodies, thereby maintaining a ‘top down’ approach. The spirit of empowerment must surely mean more than ‘consulting’ with ‘such persons as they (Ministers) consider appropriate’.

Part 2: Community Planning

Part two of the Bill places community planning partnerships on a statutory footing and imposes duties on them around the planning and delivery of local outcomes.

Engaging communities in community planning

There has been recognition for some time that the community planning process should be more robust in terms of shared planning and community involvement. The Bill clearly acknowledges this and the Policy Memorandum says that:

‘community planning is the process by which public bodies work together and with community bodies to plan for, resource and provide services which improve local outcomes in the local authority area. This clearly sets out how the Scottish Government intends community planning to operate, and the presence of communities in the core of the process’

² <http://www.planandevaluate.com/>

There is recognition that community planning partnerships need to ‘facilitate processes which fully engage communities in the decisions about the design and delivery of services to achieve ... outcomes’ in the Background section of the Policy Memorandum (para. 11), but this is less explicit in the Specific Provisions section of the Policy Memorandum (paras 34-43) or in the Bill itself. Its definition of the community planning partners ‘at the table’ does not include community interests; instead their participation appears to be at the invitation of the official partners should those parties choose. There is a danger that this may further centralise and cement power with local authorities and other public bodies.

The Bill says that the community planning partnership (CPP) must ‘consider which community bodies are likely to be able to contribute to community planning’ 4 (5) (a). This raises a number of questions;

- does this mean that the community body is not considered part of the CPP?
- what does contribute mean?
- can community bodies ever be part of the CPP itself? and;
- is it necessary for CPPs to have sole ownership of such a decision?

The Bill also proposes that CPPs must:

‘make all reasonable efforts to secure the participation of such community bodies in community planning 4 (5) (b), and to the extent (if any) that such community bodies wish to participate in community planning, take such steps as are reasonable to enable the community bodies to participate in community planning to that extent 4 (5)(c).’

Those involved in the process will need to know what are deemed to be ‘reasonable efforts’ in these circumstances, and we would recommend that guidance on the Bill once enacted would give a clearer steer on what might, and might not, be deemed reasonable in view of the policy ambitions behind the legislation.

Overall, we welcome the recognition that CPPs will need to take steps to enable the participation of community bodies as this reinforces a need that was recognised many years ago in the drawing up of the National Standards for Community Engagement. We would suggest that examples of existing good practice in which CPPs have successfully implemented the National Standards are widely promoted with public sector, third sector organisations and community bodies.

New language

We note the introduction of new language – a local outcomes improvement plan as opposed to a single outcome agreement, and welcome the emphasis in the Policy Memorandum (37), which states that the local outcome improvement plans should provide (our emphasis):

*‘a clear “plan for place”, focused on **prevention and reducing inequalities**’*

The new obligation on CPPs to consult community bodies they see as appropriate in the development of the local improvement plan is also welcome. However, we believe there should be more than ‘consultation’ on these important matters, and that the guidance should be more explicit on the questions of when and how such consultation should take place.

We do, however, greatly welcome the provision in section 9 (3) of the Bill which states that (our emphasis):

*‘Each community planning partner must, in relation to a community planning partnership, contribute such **funds, staff and other resources** as the community planning partnership considers appropriate’*

(a) with a view to improving, or contributing to an improvement in, the achievement of each local outcome referred to in section 5(2)(a), and

(b) for the purpose of securing the participation of the community bodies mentioned in section 4(5)(a) in community planning.

This makes it clear that resources do need to be made available to support community involvement and participation in the process (albeit this may only be a consultation process), and goes some way towards a closer equivalence between the resources available to public bodies and the lack of these in many communities.

Finally, Section 5 (4) (b) of the Bill says that the CPP must take account of ‘the needs and circumstances of persons residing in the area of the local authority to which the plan relates’. It will be important to understand how CPPs will go about this, especially if there is only token acknowledgement of the need to engage and consult effectively. We propose that post-enactment guidance should draw attention to the resources and methods now available to assist local community needs assessment.

Part 3: Participation Requests

Part three of the Bill provides a mechanism for communities to have a more assertive role in having their voices heard in how services are planned and delivered.

In the Bill (17), it states that a community controlled body or a community council (or any other body that Ministers may designate) can make a request to a public body (and not necessarily the community planning partnership) to take part in a process to improve an outcome, including outcomes related to economic development, regeneration, public health, social wellbeing or environmental wellbeing.

It is for the community body to define the community it represents, whether that is by geographical boundaries or by common interests or characteristics of its members, and the body must be able to demonstrate that the community does control the body, that membership is open, and that its aims and purposes are to benefit the community. Our view

is that this is an improvement on the definition of 'community body' in earlier consultation rounds.

In making a request to a public service authority to be permitted to participate in an outcome improvement process, the community participation body, as defined above, must specify the outcome it seeks to improve, set out the reasons why it considers it should participate in the outcome improvement process, provide details of any knowledge, expertise and experience it has in relation to the outcome, and provide an explanation of the improvement in the specified outcome which it anticipates may arise as a result of its participation in the process.

We believe that this represents an improvement over the statements in earlier consultations as it widens the potential for participation by removing the need for 'evidence' as referred to in the draft Bill. Paragraph (47) of the Policy Memorandum states that:

'The community body will need to explain what experience it has of the service and how it could contribute to its improvement; this could be as simple as showing that its members are users of the service and outlining their ideas'

We suggest that this is not an onerous requirement and is a reasonable request to make of a participating body.

We welcome Section 25 of the Bill which deals with reporting, stating that a report must be published that:

- summarises the outcomes of the process, including whether (and, if so, how and to what extent) the specified outcome to which the process related has been improved,
- describes how and to what extent the participation of the community participation body that made the participation request to which the process related influenced the process and the outcomes,
- explaining how the authority intends to keep the community participation body and any other persons informed about changes in the outcomes of the process, and any other matters relating to the outcomes

The requirement to prepare and publish such a report suggests that CPPs and others will be required to engage in a robust planning and evaluation process in order that such a report may be generated. It will be important for such reports to be circulated widely across all community interests so that the performance and outcomes achieved can be properly scrutinised. We note that many public bodies now use the VOiCE³ resource for this purpose and that this could be a useful resource for CPPs in future.

In general, SCDC is of the view that the provisions concerning participation requests will potentially be very useful to 'community participation bodies' (as defined) to trigger action on a concern or opportunity, in the knowledge that it will be a legal requirement for the CPP

³ <http://www.voicescotland.org.uk/>

to respond and react. We do, however, have some concerns about the way these provisions may operate in practice and would wish to see safeguards to meet such concerns.

As with other aspects of the Bill, the key issue is the extent to which the provisions may serve to further empower those communities that are organised and influential, while not achieving meaningful change for marginalised or excluded communities, or those with weak infrastructure. Such communities may well be unaware of the rights they will now have, or be aware of them but unable to take advantage without support and advice.

Elsewhere in the Bill it is recognised that funds, staff and other resources need to be committed by community planning partners to secure the participation of community bodies in setting local outcomes, and we would recommend that similar provisions should apply in the case of participation requests, in order to achieve a level of equity in the way communities may access and use the legislation.

Consideration also needs to be given to the skills that may be needed to advise community-led bodies to raise concerns under the participation process, and potential conflicts of interest between community bodies and between communities and public bodies must be recognised. Potential conflicts will presumably need to be addressed through the CPP process. Guidance on how disputed or conflicting outcomes might be handled should be explicit. This is not to question the right to request participation – which should be fundamental – but an acknowledgement that the process may be fraught with difficulty.

Broad observations

Here we note some of the questions and issues we have noted on reading the Bill and Policy Memorandum.

- We welcome the improved key definitions of community controlled bodies and community participation bodies
- The Financial Memorandum identifies modest additional costs for Scottish Government administration, local authorities and others bodies. We would seek similar reassurance that the costs of meaningfully engaging communities, especially with those community bodies that are more marginalised, are fully met.
- We are unclear about the role of arms-length organisations. Are these deemed to be CPP members or the sorts of agency that the CPP should invite or consult?
- The Policy Memorandum (paragraph 12) makes interesting observations that the more communities become engaged with local and national government the more likely they are to engage with electoral and democratic processes. We are not aware of any evidence to back this up, and we suggest that the Bill may test this. We fully support the efforts currently in place to review local democracy in Scotland and we propose that participatory democracy is as important as representative democracy. We welcome any policy initiative designed to extend democratic participation, for example, participatory budgeting.
- The Policy Memorandum (paragraph 45) refers to the National Standards for Community Engagement as being available from SCDC. We believe an opportunity has been missed to remind us they remain endorsed by a number of national agencies and that they are also accessible at the Scottish Government website. Given this earlier investment by Scottish Government in the National Standards, their widespread use through VOiCE, their integration into other engagement and participation frameworks (including the NHS Participation Standard and the Third Sector Engagement Matrix), it is important that the National Standards remain as a nationally recognised and endorsed framework for good practice in effective and meaningful community engagement.
- The Policy Memorandum (paragraph 25) goes through each of the proposals introduced at an earlier stage and which were subsequently dropped, indicating either why they were dropped or what has happened instead. These items include the previous proposals to require the publication of community engagement plans, to have a named community engagement officer to adjust procurement in favour of community groups, to give communities the right to be consulted on local budgets, to enforce the sale of empty property and to change the status of community councils. We are concerned at the withdrawal of these provisions in the Bill and we would like to see reference to them in any accompanying guidance as potential

supports for effective implementation, if and when the Bill becomes an Act of the Scottish Parliament.

- Comments made during the rounds of consultation on the draft Bill noted that there was little acknowledgement that some, perhaps all, communities require support if they are to engage effectively with decision making or indeed to assume ownership of assets. We welcome the fact that the Policy Memorandum reminds us that legislation alone cannot deliver community empowerment and in paragraphs 18 and 19 it is made clear that ‘appropriate support, guidance and a culture of nurturing community action’ are also key. The Policy Memorandum also reminds us that, as they become empowered, communities are likely to seek partnerships with others to achieve their goals, and that this should also be supported.
- Paragraph 21 of the Policy Memorandum summarises the purpose of the Bill as removing barriers and making it easier for communities to achieve their goals by allowing them to be more pro-active, and placing duties on public bodies to engage and respond. While these sections of the Policy Memorandum are clear that support is needed, it is less clear on how it should be provided and by whom, other than a vague reference to ‘the attitudes, skills and commitment of many people working in many different organisations’. This is not enough to address the acknowledged inconsistencies in support to communities or to promote best practice (paragraphs 19 and 20).
- The widening of social, economic and health inequalities is a priority concern for all agencies at national and local levels. We would recommend that greater commitment is given to inviting community bodies to work with the public and third sectors in systematically addressing policy and practice impacts on inequalities. Proven interactive tools such as NHS Health Scotland’s Inequalities Impact Assessment exist to facilitate this process⁴

⁴ <http://www.healthscotland.com/equalities/hia/index.aspx>

What happens now?

Now that the Bill has been introduced, it will now undergo the Scottish Parliament legislative process, as follows:

Allocated to Lead Committee – now confirmed as the Local Government & Regeneration Committee.

Stage 1:

- Call for evidence put out by Lead Committee closing on 5th September 2014
- Evidence sessions held (*probably late September/October*)
- Bill goes to Finance Committee
- Bill goes to Delegate powers and law reform committee
- Lead Committee reports on the general principles of the Bill
- Parliament Chamber debates and votes on general principles of Bill – (*probably around January 2015*)

Stage 2:

- Main amendment stage (by MSPs)
- Bill still with Lead Committee
- Short deadlines
- Limited engagement

Stage 3:

- Last amendment stage
- Bill in Chamber
- Amendments then final debate
- Vote to pass the Bill

Royal Assent

- Four weeks for legislative competence checks
- Queen signs the Bill which now becomes an Act

Commencement

- Aim is *June 2015* although different parts could start at different times
- Implementation, involving development of secondary legislation and guidance.

Further information

All relevant documents can be downloaded at

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/77926.aspx>

The Scottish Parliament's Local Government & Regeneration Committee has now issued its call for evidence on the Bill, which provides a further opportunity to influence the Bill and its implementation. See the call for evidence and related documents at

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/78599.aspx>

SCDC has already produced a number of briefings on, and responses to, the Bill at its various stages so far. These include:

- [SCDC submission to Community Empowerment \(Scotland\) Bill consultation \(February 2014\)](#)
- [SCDC briefing on Community Empowerment \(Scotland\) Bill \(November 2013\)](#)
- [New rights for Scotland's communities: SCDC briefing for communities \(December 2013\)](#)
- [SCDC response to Community Empowerment and Renewal Bill Consultation \(September 2012\)](#)

Further commentary on the publication of the Bill

- [Voluntary Health Scotland](#)
- [Community Development Alliance Scotland \(CDAS\)](#)

The following organisations have previously issued useful information and comment on the Bill and its implications for communities.

- [Development Trusts Association Scotland \(DTAS\)](#)
- [Scottish Council for Voluntary Organisations \(SCVO\)](#)
- [Health and Social Care Alliance](#)
- [Scottish Refugee Council](#)
- [Glasgow Disability Alliance](#)

If you have any comments on our briefing, or if we can assist you with making a response to the consultation, please contact Stuart Hashagen or Andrew Paterson by email at stuart.hashagen@scdc.org.uk or andrew.paterson@scdc.org.uk or phone 0141 248 1924.

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