

## PERTH AND KINROSS COUNCIL

## STRATEGIC POLICY &amp; RESOURCES COMMITTEE – 12 FEBRUARY 2014

## COMMUNITY EMPOWERMENT (SCOTLAND) BILL CONSULTATION

## Report by Executive Director (Education and Children's Services)

**PURPOSE OF REPORT**

The report outlines the recent Scottish Government consultation on the forthcoming Community Empowerment (Scotland) Bill and presents the draft response from Perth and Kinross Council for consideration and approval.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 As part of the Scottish Government's vision for strengthening Scotland's communities, a Community Empowerment (Scotland) Bill was issued for public consultation in November 2013. The Bill is part of the SG's current Programme for Government and aims to strengthen community participation unlock enterprising community development and renew communities. An initial consultation was undertaken in late 2012. The full public consultation includes some of the original proposals but new proposals are also included. The formal consultation period closed on 24 January 2014 and the Council has therefore submitted a draft response subject to formal approval by this Committee.
- 1.2 The Bill proposals include:
- i. A proposed new right for communities to request the transfer of local public assets (land and buildings) so they are managed by the community, for the community
  - ii. A proposed new right for communities to request involvement in shaping and delivering local public services to achieve better outcomes for local people and places
  - iii. Greater transparency in management and disposal of Common Good land
  - iv. Improved powers for local authorities to recover the costs of dealing with dangerous and defective buildings
  - v. measures to streamline and extend the community right to buy, including to urban areas
  - vi. new duties to strengthen Community Planning so that Community Planning partners strengthen their focus on action and delivering better outcomes for local communities, and away from process
  - vii. new powers for local authorities to create local business rate relief schemes
  - viii. some broader policy questions on how participation in local democracy and decision making might be strengthened.

1.3 The consultation is split into 3 parts:

- draft legislative provisions for proposals **i-iv**, above
- detailed policy proposals for those not included in detail in the 2012 consultation: **v-vii**, above
- broader policy questions in relation to local democracy and decision making – **viii**, above.

**2. PROPOSALS**

2.1 The Council's draft response is at **Appendix 1**.

2.2 The key elements in the draft response are as follows:

- The need for the Bill to set out a clear rationale in the context of Public Service Reform. It is not clear that the high level aspirations for the Bill (as summarised in 1.1) will be fully achieved by the specific proposals set out in the consultation.
- Overall support for the proposals in relation to community right to request asset transfer, right to participate in public service design/delivery to achieve better outcomes, and extension of the right to buy. However aspects of the proposals need clarification and more detail about how they would operate in practice, in particular in relation to existing statutory processes. We think they would benefit from an expert national Working Group to develop and support implementation, assuming the Bill is passed.
- The cost implications of some proposals are difficult to predict at this stage – for example the costs of maintaining a Common Good Register which is one of the proposals in the Bill, could be substantial for some Councils.
- There is a key issue in relation to risk apportionment where local assets are to be transferred to local communities. A realistic understanding of the possibility of failed community ventures and the potential subsequent costs to be borne by public authorities is required.
- The Bill needs to reflect a better understanding of the extent and limitations of Common Good which is not the best or only mechanism for achieving community empowerment.
- More detail is required on what is proposed in relation to new powers for Councils to deal with dangerous/defective buildings, and in relation to existing legislation on allotments.
- New duties proposed for all Community Planning partners which would ensure stronger accountability for all partners in achieving better outcomes for local people and communities are welcomed. But we are unclear on the added value of making the establishment of CPPs a statutory requirement, since CPPs already exist in all Council areas and the rationale for them is well recognised.
- There is an opportunity for the Bill to set clearer expectations of scrutiny and regulatory bodies in relation to how they audit and inspect positive impact on local communities. Currently there is no mandate for the Accounts Commission / Audit Scotland to scrutinise Community Planning Partnerships other than via the Best Value inspection mechanism for Councils. The Bill

could be more proactive and specific in relation to this key area, and how scrutiny processes themselves must evolve to ensure a better and more comprehensive understanding the total impact of public services on communities as a whole.

### **3. DEVELOPMENT OF A PERTH AND KINROSS COUNCIL RESPONSE**

- 3.1 The areas covered in the consultation on the Bill are extremely wide ranging, therefore a range of Council services have been involved in compiling the draft response.
- 3.2 As stated, the Council's draft response was submitted to the Scottish Government on 24 January 2014 subject to Committee approval. A final version of the response will be submitted subject to approval by Committee.

### **4 CONCLUSION AND RECOMMENDATION**

It is recommended that the Committee:

Approves the draft response by Perth and Kinross Council to the Scottish Government Community Empowerment (Scotland) Consultation (Appendix 1).

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

| <b>Strategic Implications</b>                       | <b>Yes / None</b> |
|---|-------------------|
| Community Plan / Single Outcome Agreement           | <b>Y</b>          |
| Corporate Plan                                      | <b>Y</b>          |
| <b>Resource Implications</b>                        |                   |
| Financial   | <b>N</b>          |
| Workforce   | <b>N</b>          |
| Asset Management (land, property, IST)              |                   |
| <b>Assessments</b>                                  |                   |
| Equality Impact Assessment                          | <b>N</b>          |
| Strategic Environmental Assessment                  | <b>N</b>          |
| Sustainability (community, economic, environmental) | <b>N</b>          |
| Legal and Governance                                | <b>N</b>          |
| Risk  | <b>N</b>          |
| <b>Consultation</b>                                 |                   |
| Internal  | <b>Y</b>          |
| External  | <b>N</b>          |
| <b>Communication</b>                                |                   |
| Communications Plan                                 | <b>N</b>          |

### 1. Strategic Implications

#### Community Plan / Single Outcome Agreement

- 1.1 The Perth and Kinross Community Plan / Single Outcome Agreement in terms of the following priorities:

- (i) *Giving every child the best start in life*
- (ii) *Developing educated, responsible and informed citizens*
- (iii) *Promoting a prosperous, inclusive and sustainable economy*
- (iv) *Supporting people to lead independent, healthy and active lives*
- (v) *Creating a safe and sustainable place for future generations*

This report relates to all five Objectives

#### Corporate Plan

- 1.2 The Perth and Kinross Community Plan 2013-2023 and Perth and Kinross Council Corporate Plan 2013/2018 set out five strategic objectives:

- (i) Giving every child the best start in life;
- (ii) Developing educated, responsible and informed citizens;
- (iii) Promoting a prosperous, inclusive and sustainable economy;
- (iv) Supporting people to lead independent, healthy and active lives; and
- (v) Creating a safe and sustainable place for future generations.

This report relates to all five Objectives.

- 1.3 The report also links to the Education & Children's Services Policy Framework in respect of the following key policy area:

- Communication and Consultation

## **2. Resource Implications**

### Financial

- 2.1 There are no resource implications arising from this report.

### Workforce

- 2.2 There are no workforce implications attached to this report

### Asset Management (land, property, IT)

- 2.3 There are no asset management implications attached to this report.

## **3. Assessments**

### Equality Impact Assessment

- 3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.

- (i) Assessed as **not relevant** for the purposes of EqIA

### Strategic Environmental Assessment

- 3.2 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.

No further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

### Sustainability

- 3.3 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.

There are no implications for sustainability.

### Legal and Governance

- 3.4 There are no legal implications for this report.

### Risk

- 3.5 There are no risks associated with this report.

## **4. Consultation**

### Internal

- 4.1 Perth and Kinross Council Executive Officer Team and Corporate Management Group have been consulted in the development of this report.

### External

- 4.2 Community Planning Partners will submit their own responses following a presentation to the CPP Board on 7 December 2013.

## **5. Communication**

- 5.1 Not applicable (n/a)

## **2. BACKGROUND PAPERS**

### **Consultation on the Community Empowerment (Scotland) Bill**

[www.scotland.gov.uk/Publications/2013/11/5740](http://www.scotland.gov.uk/Publications/2013/11/5740)

## **3. APPENDICES**

Appendix 1 – Draft Response to Community Empowerment (Scotland) Bill Consultation

## APPENDIX ONE

### PERTH AND KINROSS COUNCIL Consultation on the Community Empowerment (Scotland) Bill

#### Consultation Questions

#### Chapter 3 - Proposals with draft legislation

#### 3.1 Community Right to Request Rights in Relation to Property

**Please read Part 1 of the draft Bill (Annex C, pages 1 to 9) before you answer these questions:**

Q1 Do you agree with the definition of community body at section 1? Do you have any changes to suggest? Yes ☒ No ☐

In general the definition seems adequate although the Policy Memorandum and Explanatory Notes for the Bill could helpfully set out in more detail the Government's thinking and policy aspirations in terms of strengthening the role of communities in shaping public services.

The Bill could better reflect the fact that the landscape of community engagement and empowerment is fast evolving, and not just in Scotland. The debate about public participation in public services is an international one. Scotland should be ambitious in shaping this debate, and it is not entirely clear how all the proposals in this Bill will achieve the aspirations set out in the preamble to the consultation document.

It would also be helpful to locate the specific policy aims for this Bill within the overarching rationale for Public Service Reform, with the relationship to other strands of PSR – in particular the Public Bodies (Joint Working) Bill and the Children and Young People Bill clearly explained.

Overall, language and terminology could be more clearly defined and explained in the Bill provisions - particularly in this first part, where some terms may be off-putting for some readers, assuming that a key aim of the Bill is to encourage local people to play a more active role in their communities and to broaden participation. The rationale for the 2 different definitions of community body in relation to the right to request asset transfer and the right to request participation in planning services which improve outcomes is understood. A company limited by guarantee, a charity or other form of incorporated body is the right constitutional basis for some community bodies but not all. Others function very effectively without this status (and indeed are particularly skilled and practiced in engaging with marginalised individuals or communities because of their less formal status).

It is not clear to what extent the full range of existing community body models has been considered in preparing the consultation: for example Parent Councils, SCIOs, Local Development Trusts, Constituted Community Groups and Residents Associations.

There needs to be more policy debate nationally about how different social enterprise models can stimulate and support the community empowerment agenda.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)? What other bodies should be added, or removed?

Yes ☒ No ☐

We would suggest adding the following:

Transport Scotland  
Scottish Prison Service  
The Forestry Commission

**sportscotland**, Creative Scotland and Visit Scotland have key roles to play in delivering better outcomes at local level (for example: health improvement; lifelong learning, community regeneration; economic development). Consideration should be given to their inclusion.

Consideration also needs to be given to the role of cross-border authorities in supporting both:

- the wider community empowerment aspirations of the Bill (for example the role of DWP in local Community Planning);
- the practical proposals in relation to local asset transfer/more effective utilisation of the public estate for the benefit of communities (for example Ministry of Defence and Network Rail own land and other assets.)

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

There are aspects of disposal out of the control of the local authority such as the consent of the Sheriff in respect of inalienable Common Good property, Scottish Ministers consent for HRA property and the overarching requirement to obtain best reasonable consideration. These mean that any in-principle decision would have to be subject to one or more of the above. The interaction of the proposed legislation with existing legislation appears to be absent from the proposals and Scottish Government should give more detailed consideration to this.

Assuming clarity on this key issue, we offer the following points on timescale and process:

- All timeframes appear reasonable. A key factor is that timescales can be extended if required by agreement between the authority and the community body – so long as the overall process is clear and understandable to community bodies from the outset. Scottish Government should give consideration to what public information/dissemination can be resourced and managed nationally.



- Section 5(6) is about the authority providing the community body with a decision to agree or refuse the request and will be either a period prescribed in regulations made by Scottish Ministers, or a longer period agreed between the authority and the community body
- Ideally a 6 month timescale overall should be aimed for; no longer than a year and the 'relevant authority' should be prepared to explain its reasons if the process takes longer.
- Assuming all relevant information has been submitted by the community body, it should be fairly straightforward to assess the request for asset transfer and an 'in principle' decision could be provided within, say, 3 months of receiving the request. But in order to do this community bodies need to understand what they are required to provide in addition to the list contained within Section 3(4), e.g. confirmation of funding, business plan, etc.
- Criteria for the assessment process needs to be clear and transparent and SG may want to consider convening a Working Group with relevant expertise to support implementation.
- Authorities will need to consider the resource requirements to manage caseloads of community requests and potential to do this more efficiently and effectively on a partnership basis, through the Community Planning Partnership. All community bodies will need some level of support from the authority to meet the assessment requirements: some will not need much but others will require a high degree of support which may delay timescales.
- Section 6(2)(c) relates to the relevant authority agreeing to a request and the decision notice issued to the community body, including a period within which an offer must be submitted. Section 6(3) states that this *must be a period of at least 6 months beginning with the date on which the decision notice is given*. This appears a reasonable timeframe as it is presumed that the community body will have already undertaken sufficient research when providing information to enable the authority make an informed decision on the transfer request and only the legal paperwork, funding agreements, etc. will remain to be concluded.
- Section 6(5) relates to the contract not being concluded before the end of the period mentioned in subsection (6). Section 6(6) states that the period is either *the period of 6 months beginning with the date of the offer*, or a longer period agreed between the authority and the community body, or a period as directed by the Scottish Ministers (if the authority has refused to agree to a longer period).

Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8? Are there other appeal or review procedures that you feel would be more appropriate? Yes ☐ No ☒

At the moment there is no right of appeal against decision by Councils in respect of local asset transfer. Determination by Scottish Ministers would be a significant intervention in how local decisions are made in respect of these issues.

The aim should be to ensure the number of appeals are minimised by placing emphasis on getting the first stages of the process right. This is about ensuring clarity from the outset for the community body about what information is required and the criteria against which this information will be assessed – see comments in response to Q3. The relevant authority should issue clear, valid reasons (against the assessment criteria) for declining the asset transfer request.

An arbitration process could be incorporated as an intermediate step before determination of appeals by Scottish Ministers but this function should be resourced and managed nationally, not least to ensure consistency of approach. Expanding the existing remit an existing body could be considered. The risk is in increasing bureaucracy around the process.

Q5 What form of appeal or review processes would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

See response to Q.4, above.

More generally however, how the determination of appeals against local authorities will be managed in practice requires more detail than currently set out in order for us to fully comment. It is not clear how these proposals sit with the broader principles of local government and local decision-making or with existing appeal processes for local authority services.

Q6 Do you have any other comments about the wording of the draft provisions?

The wording appears to assume conflict between communities and public authorities and could be couched more positively. There are many existing examples of effective partnership between public services and local communities, and within local authorities there is an existing strong will to engage effectively and meaningfully with local people about public service design and delivery. Within the overall language of the Bill, there could be a stronger emphasis/‘read back’ to the principles of Christie – that these proposals are intended to strengthen the voice and role of communities in ways which both make best use of finite public resources and achieve better outcomes for individuals, families and communities.

Section 5(f) deals with the winding up of a company and the treatment of land the company acquired by asset transfer request. Section (5)(f)(i) confirms that

the land will pass to another community body approved by the Scottish Ministers, or (ii) to the authority from whom the rights were transferred. In an ideal world all community schemes will succeed, but on occasion some projects will fail, and the transfer of a building in need of upgrade/repair will result in financial pressure on the authority from which the building was originally transferred. This should not be overstated, but it is nevertheless a risk which needs to be understood and fully debated during the Parliamentary passage of the Bill.

When a community body has requested that ownership of land is transferred to it, Section 3(4)(c) states that the body must include the price it is willing to pay for the land, and Section 3(4)(d)(i) states that the body must include the amount of rent it is prepared to pay in respect of the lease. The Disposal of Land (Section 74 Local Government (Scotland) Act 1973 requires a local authority to obtain best reasonable consideration for the disposal of a property. There is therefore a potential conflict between the requirements of the proposed Community Empowerment (Scotland) Bill and the Disposal 2010 regulations.

The Bill proposals are silent in relation to assets held on the Housing Revenue Account. Currently there are constraining processes set in place by the Scottish Government, who ultimately make the decisions if an HRA asset can be disposed of. It would be helpful to clarify if the Bill does or does not apply to these types of assets? Or is application to the Scottish Government for permission to dispose going to be changed or streamlined in light of the Bill?

Where the HRA is concerned, Councils may need to look at the properties which are held on that account and consider whether they really are still benefiting Council tenants and, if they are not, move them to the general fund. That might involve moving money across accounts but would avoid the need for Ministers' consent for a disposal, although consent would be required for the transfer between accounts

Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can

It is difficult to quantify these on the basis of the current proposals, but the following points should be considered:

We are very comfortable with the principle of asset transfer but there are genuine issues and risks for both public authorities and communities which need to be thought through if the policy is to be successful in the long as well as the short term.

The starting point must be a robust business case and business plan from the community body, with realistic income and expenditure assumptions which demonstrate that it can manage the asset viably in the long term. Income

generation and other funding sources need to be identified as part of a long-term business plan. Where sale of land / other assets is involved, the community body has to be clear about what it can realistically do and the public authority has to be clear about its duty to secure best consideration in disposing of an asset.

This is not about public authorities setting unrealistic expectations on communities to operate commercially from day one, or requiring the 'counsel of perfection' from local people in terms of demonstrating their ability to manage an asset effectively. The public authority must consider the potential of the community - to unlock its own skills and expertise in taking on responsibility for managing local assets, and in ways which may be more cost effective for the public purse. But there has to be a honest and open appraisal of what community capacity exists at the outset of an asset transfer request; how best public authorities (and other partners, including the voluntary and private sector) can help develop that capacity; what social enterprise model is most appropriate for managing the asset to be transferred; and what risk apportionment is appropriate between the transferring public authority and the community, particularly during the transition phase and initial operating period.

State aid may also be an issue where a community group might intend or need to use a community facility for commercial purposes in order to make it pay.

The majority of transfer requests will mainly relate to land used for community recreational purposes, and perhaps small village halls. Savings relating to transferred parks, grassland, etc. are likely to be minimal.

Potential savings for public authorities on upgrade, repair and maintenance for buildings may be significant, but this will depend upon the age, condition, and type of building transferred. The incentives for communities to take on buildings which may require significant investment and on-going maintenance have to be considered more fully as a national policy issue. The future shape of central government (including Lottery) funding structures for community bodies, and the ability of community bodies to access funding and income sources not available to public authorities, is key.

There is the potential issue of historic debt which has been incurred on the transferred asset. The receipt may fall short of fully repaying the outstanding debt, and if the local authority has insufficient financial resources to extinguish the remainder it may end up in a position where it is repaying debt longer term for a property it doesn't own.

Administration costs need further consideration. It is unlikely that the volume of transfer requests will justify setting up a dedicated team (particularly in times of fiscal constraint). Each public authority will need to rely on existing

staff to manage the additional workloads and there may also be training and development requirements for some staff teams.

More specific points, particularly in relation to long term risk apportionment and liability are noted below:

- Section 3 talks about land rather than property and it is not always clear in the Bill provisions which of these is being referred to.

- There is a need for clarity about actual ownership of an asset and what this will entail in different circumstances. Is the assumption that ownership would always pass to the community body or would the public authority retain any liability?

- Similarly in cases where a local asset may transfer back to the public authority is it not clear if any outstanding liabilities would transfer back. There is an assumption that the public authority will have no option but to accept the asset back and this could create additional burdens particularly if a community management arrangement has failed significantly.

- Could a community group develop a new asset (for example demolish an existing asset and rebuild a new one)? Again in these circumstances where might liability lie long term?

- Will public authorities be liable for obligations associated with being the owner of an asset leased to a community group?

- What scope would remain for intervention in the event of failure by a community body to manage an asset viably?

### 3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

**Please read Part 2 of the draft Bill (Annex C pages 9 to 14) before you answer these questions:**

Q8 Do you agree with the definition of community body at section 11? Do you have any changes to suggest? Yes ☒ No ☐

The definition appears reasonable although see comments in response to Q1. The emphasis on Community Councils is noted. CCs of course already have a statutory consultee role in relation to some issues. It is not clear to what extent the range of existing community body models has been considered in preparing these proposals. Community Councils may not always reflect all the interest of their local communities.

There are other types of community body which also have a key role in providing input to public service design and delivery, including less formal community groups and networks which can be highly effective at engaging very marginalised people or communities, including communities of interest and equalities groups. The Explanatory Notes for the Bill could say more about this and also emphasise the key purpose of a community body in this context in relation to public benefit. The Bill should recognise the variety of community groups, and set out how Community Councils can work constructively with them.

Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)? What other bodies should be added, or removed? Yes ☐ No ☒

See Q.2

Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover? Is there anything you would add or remove? Yes ☒ No ☐

The proposals seem to assume that participation requests would operate 'one-way' only, and it is probably worth emphasising more clearly that a public authority can engage with more than one community body in the interests of improving outcomes for a particular locality, community of interest etc.

Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request?  
Are there any other criteria that should be considered? Yes ☒ No ☐

The Policy Memorandum and Explanatory Notes may want to emphasise that the policy aim here is strengthening participation in local democracy, and explain clearly how this process will sit with existing statutory duties on public authorities to engage with communities in planning and delivering public services.

We agree with the criteria at Section 15. 'Any other criteria' is covered by Section 15(3)(f) *any other matter (whether or not included in or arising out of the request) that the authority considers relevant.*

Q12 Do you have any other comments about the wording of the draft provisions?

As already stated, the wording of the Bill appears to assume conflict between communities and public authorities, or an assumption on the part of public authorities that communities do not have a legitimate say in how local public services are shaped. There are many positive examples of how public authorities and communities have worked in partnership to achieve better outcomes for local people. This is not to say we should be complacent, but more positive phrasing is likely to gain more traction across the public sector, and beyond, to see the Bill's policy aims achieved.

Should the wording of Section 15(2) simply be replaced with the Section 15(4) wording?

Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

There is insufficient detail in the Bill to answer this definitively. What can be said is that a more systematic approach to engaging and involving communities in how local public services achieve better local outcomes is central to the prevention agenda and meeting the challenge of shifting total public spend 'upstream' to focus on the root causes of entrenched social challenges, rather than on crisis intervention. The views of the community about root causes and how best to tackle them need to be seen as a key part of the evidence base, alongside empirical data, which public authorities should systematically draw on to determine priority local outcomes, and allocating total public spend against these priorities.

### 3.3 Increasing Transparency about Common Good

**Please read Part 3 of the draft Bill (Annex C pages 14 to 16) before you answer this question:**

Q14 Do you think the draft provisions will meet our goal 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? Yes No X

What other measures would help to achieve that?

We are not convinced that increased focus on Common Good (CG) is the most effective way to achieve the Bill's policy aims. CG is an inefficient administrative burden on local authorities, and can divert resources from wider good work done by local authorities to deliver local services in partnership with communities.

With almost 40 years having passed since the abolition of burghs there must be a serious question about the continuing need to treat the property of former burghs differently from other property owned by local authorities. Given the comprehensive responsibilities which local authorities have, it seems unreasonable not to allow them to deal with such property in the same way as they fulfil their other responsibilities to their communities. The continued special treatment of CG property means that certain communities enjoy benefits not available to others by accident of history. It is also the source of misunderstanding between communities and Councils and a distraction. The provisions which are proposed in this Bill provide a framework to ensure fair treatment for all communities regardless of their location. This objective will not be achieved if CG is not addressed.

If, however, CG is here to stay, encouraging Community Councils and other community bodies to input to decisions relating to the identification, use and disposal of a CG property will be of benefit if undertaken in the spirit of openness and togetherness, and not as a token gesture. The parameters in relation to CG do need to be made clear. CG land is owned by the Council and local authorities have existing responsibilities to ensure it is used effectively. For example, Community Councils are often under the impression (wrongly) that the CG land belongs to them.

Presumably under the Bill proposals the Council will still require Sheriff consent for the disposal of CG property. In other words the request for transfer may be approved, but the Sheriff may choose to decline the sale/lease; a frustrating and inefficient process for all involved.



A CG register has been attempted before but both Local Authority Scotland Accounts Advisory Committee and Audit Scotland acknowledged the immense additional workload placed on local authorities and accepted the pragmatic alternative of determining the status of local authority property at the time it becomes surplus. If CG status were to be abolished there would be no need for a register. As an example of the size of the task, Perth and Kinross Council embarked on a comprehensive review of former burgh property employing a dedicated member of staff on a part time basis (half an FTE) over a period of two years and completed less than half the task.

Taking into account all these points the provisions should not apply to a change of use of CG property because it would alter the balance between the local authority's right to use its property as it chooses and the public interest in CG in a disproportionate way

It may be better to put all public sector land on one GIS Map for Scotland. Any register should be easy for community groups to access and be well publicised nationally.

### 3.4 Defective and Dangerous Buildings – Recovery of Expenses

**Please read Part 4 of the draft Bill (Annex C pages 17 to 19) before you answer these questions:**

Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill? Yes ☒ No ☐

We agree that the powers relating to cost recovery must be improved but the Bill as drafted is not sufficiently clear or robust for us to respond in detail.

It is suggested that the proposed wording in section 43A be added to the new powers being proposed under the Defective and Dangerous (Recovery of Expenses) (Scotland) Bill.

It is considered that the use of the term “Notice of Liability of Expenses” is less clear and does not offer the same powers of recovery as a charging order as described in the Defective and Dangerous (Recovery of Expenses) (Scotland) Bill.

It is considered that the Building (Scotland) Act 2003 in its present form is too restrictive in that currently the only option for the Local Authority in the event of owners failing to undertake work is to undertake all the work and seek to recover costs. It is our view that the Act should be further amended to state that the Local Authority may act as the “missing party” in a situation where the majority of owners agree to undertake the work at their own expense but are let down by owners who will not agree or are absent. This power is currently available under the Housing (Scotland) Act 2006 and would potentially reduce the financial risk to Local Authorities. This power may also encourage more pro-active work by the Local Authority which the introduction of charging orders would not.

Improvements to cost recovery powers appear reasonable.

Suggest that Section 27(2)(b), which relates to the payment of interest on the expenses recoverable, includes wording specifying the interest rate payable, e.g. bank base rate plus x%, for consistency and transparency across all local authorities.

Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003? Yes ☒ No ☐

Sections 25-27 relate to Compliance and Enforcement – we agree that suggested improvements are valid for these sections.

## Chapter 4 - Detailed Policy Proposals

### 4.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal? Yes ☒ No ☐

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland

There is no existing right to buy as proposed in this Bill in respect of rural communities and therefore the reference to “extending” that right to all areas is misleading. Our understanding of the 2003 Act is that it allows appropriate community bodies to register an interest in land and have first refusal when it comes on to the market. That is different from the proposal in the Bill that a body can request that the land be transferred to them at any point and that the relevant authority must then decide whether to agree or refuse the request.

Notwithstanding this point, we support the concept of a wider RTB framework for communities, provided that right to buy is in the public interest and this is explicit. The extension to urban areas is also welcomed but we would like clarity about how ‘registrable land’ in the urban context is likely to be defined in the Bill provisions.

Whilst we do support the principle it is also important to consider at an early stage the unintended policy consequences of extending RTB in this way. A parallel can be drawn between the RTB introduced for social housing in the 1980s and the problems this has subsequently created for Councils and social landlords in maintaining HMO to acceptable standards where the social landlord is no longer the majority owner of the property. Central government has had to introduce a range of legislative and other measures since the 1980s to address these problems.

Q18 Do you think that Ministers should have the power to extend “registrable land” to cover land that is currently not included as “registrable land”? Yes ☒ No ☐

What other land should also be considered as being “registrable”?

We wonder if it would not be simpler to provide a full list of land which is registrable? Anything not included, but having merit in being registrable, would be referred to SG to consider its inclusion.

In terms of registrable land, how will it be ensured that this does not become an “anti-development” tool?

Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? Yes ☒ No ☐  
What should these circumstances be?

Communities are often concerned about the blight on their localities of land and buildings left whilst a developer decides when or what they wish to do with these assets.

In small towns the blight is often very noticeable on main thoroughfares or central civic spaces where improvements can often be impeded by an absent landlord. The requirement could be that some improvement is made within 6 months of complaint and that any complaints are passed on with any sale of the building to another developing company, with a requirement for resolution within a reasonable timescale. In other words, community groups should be able to influence positive improvements by developers or other private owners.

There should be compulsory powers for communities to buy neglected or abandoned land if it can be demonstrated that the land has been treated this way, but there is a need to define neglected land or buildings more clearly.

Clear reasons for the neglect/abandonment will be required to ensure that the land has not been left idle due to underlying contamination issues etc. which will result in prolonged legal negotiations and/or additional financial burden on the community. In the case of contaminated land, the community should not have compulsory purchase powers.

Compulsory Right to Buy can be slow and expensive and more detail is required on how this would work in practice, particularly for communities which may not have had much previous involvement with legal process and may therefore be deterred from playing an active role in effecting improvements.

The definition of community needs to be flexible. It could be a community of interest in a local recreation facility, for example, with significant potential to bring about change and improvement.

Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

We would propose:

Step 1 - Community body approaches Scottish Government with the intention to invoke compulsory purchase.

Step 2 - Scottish Government notifies land owner that compulsory purchase due to land neglect and/or abandonment will be invoked – land owner must have the opportunity to present a case for retaining the land.

Step 3 – Scottish Government notifies community body that they may/may not proceed with purchase.

In the case of 'neglected' and 'abandoned' – clear definitions and time frames will have to be applied, e.g. 3 years from last use, as the land owner may have development plans which have legitimately taken time to progress through the planning system etc.

The onus should be upon the landowner to justify why, in their opinion, the land is not neglected and/or abandoned, and they must provide evidence to fully support this.

Section 36: <http://www.legislation.gov.uk/asp/2003/2/section/36>

Section 38: <http://www.legislation.gov.uk/asp/2003/2/section/38>

Community Right to Buy (Prescribed Form of Application and Notices) (Scotland)

Regulations 2009: <http://www.legislation.gov.uk/ssi/2009/156/made>

Q21 Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate? Yes ☒ No ☐

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

The criteria appears reasonable.

Q22 Do you think that the information that is included in the Register of Community Interests in Land is appropriate? Yes ☒ No ☐

If not, what should that information include?

The information appears reasonable.

Q23 How could the application form to register a community interest in land be altered to make it easier to complete (e.g., should there be a word limit on the answers to particular questions)? Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act? Yes ☒ No ☐

Do you have any other suggestions?

The application should be available online for ease of completion, with relevant links to the legislation, and given a case number when completed. The form can thereafter be printed, signed and mailed to the Rural Directorate together with supporting documentation.

Section 39: <http://www.legislation.gov.uk/asp/2003/2/section/39>

Q24 Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy? Yes ☒ No ☐

If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

This is vital when land comes on the market unexpectedly.

To remove land 'unexpectedly' coming onto the market, perhaps the Bill proposals should place the onus upon the landowner to notify active local community bodies of the intention to sell the land prior to placing the same on the market.

Obviously there may be occasions when a landowner is approached directly by a third party to initiate discussions to sell; such a transaction would be 'off market' and the community body could not register an interest.

Section 44: <http://www.legislation.gov.uk/asp/2003/2/section/44>

Q25 Do you agree that the process to re-register a community interest should be a 22 re-confirmation of a community interest in land? Yes ☒ No ☐

Q26 Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its "community", and that (3) granting it is in the public interest? Yes ☒ No ☐

Yes, the community body should justify the reasons for wanting to re-register, covering points 1 – 3 above.

Section 56: <http://www.legislation.gov.uk/asp/2003/2/section/56>

Q27 What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body? Please explain the reasons for your proposal.

The timescales appear reasonable. However, it is stated that community bodies have indicated that the current 7 month timescale is too short and perhaps a 12 month timescale should be the default. Consideration needs to be given to how communities are supported to understand the process and navigate their way through it, particularly communities which may not have engaged with any kind of legal process before. There are of course examples from recent rural land reform initiatives which can be drawn on.

Q28 Do you think that some of the tasks within the right to buy (such as valuation, ballot etc.) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy? Please set out what changes you think should be made and why.

The ballot should presumably take place early on in the process to ensure that the community supports the buy out, although the community may also require a valuation to fully appreciate the financial value attached to the land and the funding required to purchase and manage long-term.

Q29 Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs? Yes ☒ No ☐

If you disagree, please provide your reasons.

Q30 Should Scottish Ministers notify the ballot result to the landowner? Yes ☒ No ☐ Please explain your reasons.

Yes, as there may be financial repercussions for the landowner, e.g. settlement from a community buy out may take longer to conclude compared to a private sector transaction.

Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community? Yes ☒ No ☐ Please give reasons for your view.

Yes, this should be included within the initial application to register an interest in land and updated, together with the business plans, financial forecasts, etc, when the opportunity arises to purchase the land.

Section 34: <http://www.legislation.gov.uk/asp/2003/2/section/34>

Q32 Do you agree that community bodies should be able to define their "community" in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Yes – there has to be a connection with necessary administrative boundaries – postcodes, ward boundaries, school catchment areas etc – but enabling communities to define themselves and articulate that definition to public authorities is key to improving local public service planning and delivery. Communities of interest, including groups who may be extremely marginalised, are central to the consideration here.

Q33 Are there any other ways that a "community" could be defined?

See earlier comments regarding community definitions.

Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions? Yes ☒ No ☐

Other legal entities should be able to use community right to buy if it is thought that this will lead to increased partnership working, stronger local economies, better employment opportunities, etc. To provide some comfort, however, such entities should be subject to regulation by, for example, Companies Act or OSCR.

Q35 Do you agree that SCIOs should be able to apply under the provisions? Yes ☒ No ☐

As SCIO are regulated by OSCR they should be permitted to apply under the provisions.

Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

Any other legal entity which is subject to scrutiny and regulation and is therefore subject to intervention in the event of mismanagement or failure.

Q37 Do you agree that Ministers should only have to “approve” the changes to Articles of Association for community bodies that are actively seeking to use or are using the community right to buy? Yes ☒ No ☐

Yes, this appears reasonable.

Section 44: <http://www.legislation.gov.uk/asp/2003/2/section/44>

Q38 Do you think that the length of a registered interest in land should remain as 5 years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

The length of a registered interest in land should remain at 5 years.

Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body? If you disagree, please give your reasons for your decision. Yes ☒ No ☐

There should not be material variances between valuations assuming these are undertaken in line with RICS valuations standards, however, counter representations should be included to provide confidence to both parties.



Q40 Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy? Yes ☒ No ☐

Please explain your reasons

There may be a number of valid reasons why a landowner has taken the land off the market. The act could include a provision that the landowner could only take the land off the market providing Scottish Ministers were satisfied that the reasons for doing so were justifiable.

Section 51: <http://www.legislation.gov.uk/asp/2003/2/section/51>

Q41 Do you think that there should be greater flexibility in a community body's level of support for a right to buy in the ballot result than is currently permitted? Yes ☐ No ☒

Q42 Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land? If yes, please explain how secured community support should be measured. Yes ☒ No ☐

The current flexibility is sufficient. Turnout levels will be subject to many factors, e.g. apathy, the public feeling disconnected from the community body, etc. If the community body has fully engaged with the public, likely support for the buy out will be known in advance. Turnout levels are a good indicator of public feeling and the 50% target should remain – perhaps an online voting facility would help achieve turnout numbers.

However 50% may be difficult to achieve in an urban area. Voters could be 50% of users of a facility rather than a geographically defined community.

Q43 Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control? Yes ☒ No ☐

We agree that community bodies should be able to submit evidence in support of ballot results where the ballot has been affected by circumstances outwith their control.

Community Right to Buy (Ballot) (Scotland) Regulations 2004:  
<http://www.legislation.gov.uk/ssi/2004/228/contents/made>

Q44 Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy "application" which Ministers would then take into account in considering their right to buy "application"? Yes ☒ No ☐

Please explain your reasons.

Scottish Ministers should have the right to ask for any additional information which will assist in considering the RTB application

Section 40: <http://www.legislation.gov.uk/asp/2003/2/section/40>

Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)? Yes ☒ No ☐

This appears reasonable; presumably the register of interest lapses when the option agreement is concluded and doesn't carry forward to the new landowner?

Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land? Yes ☒ No ☐

Please explain your answer

Yes, and the landowner should notify the community body that the option agreement has been exercised. However, there should be no option agreement on LDP sites

Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice? Yes ☒ No ☐

Please explain your answer.

Prohibition should apply the day after the day of issue; in most cases the notice will be received and therefore served upon the landowner the day after issue. If there was a full landownership database with valid email addresses, the prohibition could be emailed and followed up by official letter.

Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy? Yes ☒ No ☐

Public holidays should be excluded to remove all dubiety

Section 40: <http://www.legislation.gov.uk/asp/2003/2/section/40>

Q49 Do you agree that where a landowner makes an "exempt" transfer, this should be notified to Scottish Ministers? Yes ☒ No ☐

If you disagree, please provide reasons for your decision.

Scottish Ministers and the community body registering its interest should be notified of exempt transfers for administration purposes.

Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes ☒ No ☐

All landowners and community bodies should update their contact details; perhaps an online facility could assist with this.

Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes ☒ No ☐

How do you think that monitoring should be undertaken and what information should Ministers seek?

The community body could submit regular reports to Scottish Ministers which detail the positive (and negative) impact the buy out has had on the community. This could be a statutory requirement although the level of information required will depend upon the size and nature of the buy out scheme. Timescales for monitoring impact need to be realistic given that impact may not be evidenced until the medium-long term.

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes ☒ No ☐

## 4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?

We have no objection in principle to making the establishment of CPPs a statutory requirement, given their statutory basis is necessary to confer statutory duties on them. But we are not clear about what specific added value this will bring, particularly in relation to para 147 (i) of the consultation which is fundamental: the need for CPPs to place increased emphasis on the planning and delivery of better outcomes for local people and communities.

CPPs already exist within every local authority area and it is quite clear to Councils and CP partners that their existence is an imperative. The issue is not the existence of the CPP. The issue is the effectiveness of Community Planning as currently provided for within the LGISA 2003.

The accountability of individual CP partners remains a critical success factor for Community Planning in Scotland. We recognise that accountability lines can never be simple in a world of complex public service requirements, but we do not think para 160 of the consultation document recognises the challenges this presents on a day-to-day basis for CPPs. There is insufficient detail in the consultation about accountability and reporting requirements on CP partners and how these would be strengthened in practice to ensure a shift of emphasis away from process (attending meetings, contributing to the drafting of the SOA, etc) and towards effective collaborative action.

It is not clear how new reporting mechanisms would be monitored, or intervention/enforcement would be affected in relation to CP partners which did not meet their new accountabilities.

It may be more positive to describe the accountability chain which is central to the success of Community Planning as a 'value chain', in which the role of all partner bodies, from Scottish Ministers in determining National Outcomes for Scotland as a whole, through to local partners delivering frontline services is much more visible and explicit to local people and communities.

Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

If the fundamental requirement on all CPPs and individual CP partners is delivering better outcomes, any new statutory duties need to specifically reinforce that fundamental requirement. We therefore welcome para 151 of the consultation document which reflects the language of the Statement of Ambition for Community Planning.

Development of a statutory joint delivery plan (the SOA or equivalent) would underline CP partner responsibilities and improve transparency and accountability.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors? Yes ☐ No ☒

What other changes may be required to make this more effective?

There remains an inherent risk that CPPs will continue to be public sector driven and lack involvement from other sectors. CPPs need to become more agile in engaging with other sectors, particularly the private, voluntary and community sectors, to determine the overall level of resource which can be marshalled to deliver better outcomes for local people.

There will always be a balance to be struck between meeting community aspirations, priorities and needs. These are not loosely interchangeable terms. CP bodies have to deliver core services – for example acute health provision, fighting crime, land use planning and development – which are sometimes counter to what communities may wish them to focus on.

At the heart of this is effective, mature dialogue with communities about aspirations, priorities and need. This Bill sets out some steps towards this – local asset transfer for example is a good mechanism for building dialogue and partnership working between public services and communities – but it lacks a compelling overarching narrative about how the Scottish Government sees this as being achieved.

Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the core duties set out above achieve that? Yes ☐ No ☒

What else might be required?

We agree that the proposed core duties will help CPPs move towards effective engagement by all CP partners.

However, the role of external scrutiny bodies in examining the effectiveness of CPPs in engaging with communities as part of continuous improvement is central. For this to happen effectively, the Accounts Commission/Audit Scotland will require a mandate to audit CPPs beyond that which currently exists, which is their mandate to audit Councils via the Best Value scrutiny framework. If all CP partners are to have new duties to fulfil their Community Planning obligations then it follows that they should be subject to the same scrutiny process in relation to their effectiveness as Community Planning partners as that which currently applies to Councils. However the Bill is largely silent on this, seeking proposals for change from consultees rather than setting a proactive agenda of what Scottish Government expects from the scrutiny regime going forward.

Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

We do not see a need to clarify the role of local elected members/non-executives in legislation. The Bill proposes to place a duty upon public authorities to fulfil their CP partner role by delivering better outcomes for local people. The elected representatives of that CP partner therefore become accountable (in the case of local authorities, through the ballot box) for the success of the CPP.

For similar reasons, we do not think it is appropriate to set out the role of officers in Community Planning in primary legislation. It is for the governing bodies of individual CP partners to ensure that local executive officers deliver what is required to make local Community Planning effective. It would seem counter to the principles of local democracy and decision-making for Scottish Ministers to prescribe the role of officers in this way.

Notwithstanding these points, what is required is open and honest dialogue about local leadership of place and the role of elected members and of public service workers within that. Within this Council, a key current issue which we are debating is what kind of public service worker we need for the future. Within a local public service workforce, there needs to be a strong specialist expertise/skills set which is effectively deployed in multi-disciplinary team settings. Each and every worker needs to understand their central responsibility to engage effectively with their local community, whether they are a planner, a road engineer or someone more traditionally associated with community engagement, like a youth worker.

Q57 Should the duty on individual organisations apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

We are in agreement with the proposals at para 161, although we think that Creative Scotland should be added for reasons stated in response to Q.2.

In addition, it needs to be clear that this list is not conclusive and participation by other organisations in Community Planning may be needed depending on local circumstances; this can be amplified in Guidance.

Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?

We assume that local authorities' existing statutory role in initiating, facilitating and maintaining Community Planning will remain under the LGISA 2003 and that the additional core statutory duties proposed in this Bill will amplify more clearly the corresponding responsibilities on other CP partners in relation to the unique and distinctive role of Councils. In reality, there will always be the risk of perception that the CPP is an extension of the local authority but legislation is not the right way to mitigate this. Rather, it is vital that the CPP is active and dynamic in ensuring the engagement of other sectors around the CPP table and in on-going engagement and dialogue with local people and communities.

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed Changes? Does this require changes to their powers or functions?

See comments in response to Q.55. Also:

We think it is positive that the Bill proposes the requirement to prepare, publish and report on joint delivery plans (the SOA or equivalent) should fall on the CPP as a whole rather than on local authorities. We assume that the reporting requirements will be clear and consistent to enable benchmarking and to highlight good practice across Scotland.

A key change required is in the overall approach of external scrutiny bodies in understanding the impact of the Community Planning process on communities in totality. There is still insufficient joined-up working between different scrutiny and regulatory bodies in localities through the SRA process and the LANs, despite the clear national agenda set since Crerar (now almost a decade ago). A more consistent emphasis is needed to develop scrutiny methodology and practice away from a focus on process and what is auditable, rather than, towards what is worth auditing: by focusing on observing practice on the ground and how front-line delivery operates, and by talking more systematically to customers and communities during inspection and audit.

Alongside this, care is required to ensure that additional bureaucracy through scrutiny does not deter CPP involvement by other sectors.

Q60 What other legislative changes are needed to strengthen community planning?

The involvement of the private sector in Community Planning is critical to its effectiveness in achieving better outcomes for local people and communities. Ways of incentivising this involvement without intervening to an inappropriate degree in market forces need to be considered at national level.



### 4.3 Allotments

Q61 Do you agree with the definition of an allotment site and allotment plot?

Yes ☐ No ☒

How else would you suggest they be defined?

**Allotment Site:**

An area of land that is subdivided into allotment plots and which may or may not include communal areas and buildings.

**Allotment Plot:**

- a. A piece of land on an allotment site between 60 - 250m<sup>2</sup>
- b. Used mainly for the cultivation of vegetables, fruit and flowers for non-commercial use
- c. Leased to individuals, families, groups of individuals and non-profit organisations.
- d. There should be a maximum and possibly a restriction in the number which can be held at any one time by a household

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

This may be an impossible task. Many sites are very old and plot boundaries have changed over the years due to fence changes, soil movements, hedges etc. 70m<sup>2</sup> to 250m<sup>2</sup> are the current parameters in this Council.

Many allotments have also found it useful to divide plots up into smaller spaces so they are easier to manage for new gardeners. For example South Perth Community Garden has 64 raised beds that measure 2m by 1m by 1m and 8 mini plots that are approx. 25 m<sup>2</sup>. (CCS)  
(TES)

Q63 Do you agree with this duty to provide allotments?

Yes ☐ No ☒

Are there any changes you would make?

Local authorities can only meet such a duty within their budgetary limits and bearing in mind land availability. If Councils were required to provide allotments, funding would have to be made available to acquire and develop sites including staff costs. A better model in the current climate would be a duty for local authorities to work in partnership with the community to facilitate constituted groups to provide and run allotments for themselves. A trigger point of 15 is an adequate number for a group to be established to form an allotment committee.

Perth & Kinross Council has an effective model of working in partnership with communities to build community capacity and enable groups to form and run their own allotment sites. This work has demonstrated that allowing a small amount of seed funding and some officer time to give capacity building and technical support can result in community projects that are viable with minimal if any support from the Council. Local authorities can provide intelligence, technical expertise, coordination and some financial assistance. Methods used include meeting with community groups to help them form allotment associations with constitutions and site rules, helping the groups find suitable land and secure leases, advice on site preparation, soil testing and design, advice on Planning issues, training in relevant topics such as growing and committee skills, advice on funding and insurance, encouraging networking between allotment groups, providing online information and distributing relevant information and advice.

Representations seeking new allotment provision both as stand-alone sites and as integrated proposals for new developments could be considered through the Local Development Plan. This would allow an appropriate assessment of allotment provision in the area and would assist in developing proposals for acquisition of land by allotment associations or the local authority. When reviewing the Local Development Plan any proposals or representations for allotment use, if adopted as part of the plan, would support statutory powers relating to compulsory acquisition of land.

The temporary use of land for allotments, where that land is not immediately required for development, could also be supported by a proposal in the Local Development Plan without prejudicing its future development but the temporary nature of the allotment use should clearly be set out. (TES)

In order to increase the number of sites/plots available, the responsibility could be shared with developers and include the provision of allotment plot space within planning legislation. If residents don't want to use the sites to full capacity, the plots could be made available via the local authority database.

Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people? Yes ☐ No ☒

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered? Do you agree with the level of the targets

Option C may be the best one. We do not have any Council run allotments so this Council could not tie a waiting list to a number of plots. 3 years also seems like an excessive time to wait for an allotment without any action being taken.

It would be difficult to specify achievable targets for Councils which they would be able to keep to, due to issues such as varying budgets and priorities, the availability and suitability of land and turnover of allotment holders. Land acquisition is the biggest problem and unless the resources and powers are provided to acquire suitable land within a defined timeframe, setting targets would be pointless. The emphasis in the current climate should not be on local authority provision but on local authorities working in partnership with the community to help them to secure and run allotments for themselves and the timeframe would then be largely in the communities hands.

Q65 Do you agree with this list of local authority duties and powers? Yes ☒ No ☐

Would you make any changes to the above list?

It is not clear if these duties and powers only apply to local authorities if they have Council run allotments or whether the local authority is expected to monitor the operation of all allotments in the authority area.

The list is fairly comprehensive and appears to fulfil a large part of an authority's obligation with regard to allotments although there is no mention of committee run (and leased) allotments on local authority land

Point 7 – as long it is clear to people who may use the site that it is a temporary arrangement

Point 8 – new allotment sites will often require support for cultivation but in the longer term the groups running the site should become responsible for this (with support from local authorities if needed)

Point 9 – Local authorities should encourage and support the delegation of allotment groups/association to run allotments themselves where possible but provide capacity building support to do this.

Groups should be leased the land and given guidance only on the running of them. This has been a successful model in many authorities for years. A good lease will underline the terms and conditions that will suit both parties.

Point 10 e. Some consistent guidance is needed on what buildings require planning consent or warrant i.e. some local authorities require planning

permission for sheds or composting toilets (which are not necessarily permanent structures.).

Suggested changes in *italics*:

1. Local authorities must maintain a waiting list *for Council run allotments sites only*, which should be regularly reviewed and kept up to date. *Where there is a Community Allotment Association, they should be set up to have a proper waiting list system.* Any resident expressing a wish in writing to their local authority to have an allotment should be treated as a request to join a waiting list. The local authority must acknowledge this request in writing within 28 days *and pass the name of the individual to the nearest Community Allotment Association.* *If there is no allotment association in the area the Local Authority should provide details to interested individuals on how a Community Allotment Association can be set up and where they find capacity building support to help them do this.*

Q66 Do you think the areas regarding termination of allotment tenancies listed above should be set out in legislation or determined by the local authority at a local level?

Legislation

☒

Determined by local authority

We think this should be set out in legislation to ensure transparency and consistency is applied across Scotland

Q67 Are there any other areas you feel should apply to private allotments?

Insurance obligations should be the same as those which apply to local authority allotments.

Q68 Do you agree that surplus produce may be sold?

Yes ☒ No ☐

If you disagree, what are your reasons?

Yes surplus products should be sold as this is an excellent way for groups to raise funds. If it requires local authority agreement the process should be kept as straightforward as possible.

Q69 Do you agree with this list of subjects to be governed by Regulations?

Yes ☐ No ☒

Would you make any changes to the above lists?

If an allotment site is run by a group (whether on private or local authority land) they usually determine how rent is paid, concessions, rules, no of plots per potholder etc. Guidance can be given but to enforce conditions may be difficult as different allotment sites have different requirements, costs etc.

Local authorities could comment on what buildings, access and security to a site might be controlled through leases as again the needs will vary depending on the site and how it is run.

Health & Safety issues such as the use of chemicals (pesticides, wood preservatives etc) and disposal of containers should also be included.

## Chapter 5 – Wider Policy Proposals

### 5.1 Scotland Performs – embedding the outcomes approach in legislation.

- Q70 We invite your views on the proposal to include in the Bill a provision that places a duty on Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly progress towards these outcomes.

We agree that the Scottish Government should develop, consult on and publish a set of National Outcomes that describe their long term strategic objectives for Scotland. We assume this will be a duty only to publish National Outcomes not to enshrine specific current policy objectives in primary legislation. This would enable the ‘value chain’ from national outcomes to delivery of local public services on the ground to be more visible and transparent. The link to the reporting requirements on individual CPPs should be explicit. A summary report for all CPPs and their collective contribution to delivery of National Outcomes should be a longer-term aim of Scottish Government.

### 5.2 Subsidiarity and local decision-making

- Q71 Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?

See response to Q56.

In addition and as stated, the debate about broadening public participation in local democracy and decision-making is international. More debate could be stimulated by Scottish Government at national level about emerging good practice across the UK and beyond. By its nature, however, participation emerges from the grassroots, and central government should not attempt to prescribe the means by which this is stimulated.

It is also important that neither central nor local government becomes too insular in considering this key issue. There are much wider mechanisms – most obviously, social media – which are demonstrably driving local participation and community activism. These mechanisms are largely outwith the control of the State, and their development in the next few years is hard to predict.

## Chapter 6: Assessing Impact

### Equality

- Q72 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” under the Equality Act 2010.

On the whole we think the Bill proposals will have a positive impact on equalities groups, although, as stated, definitions of ‘community’ need more careful thought and description in the Bill.

- Q73 What differences might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?

In more affluent communities or otherwise advantaged there is likely to be greater interest in market driven solutions with potential for return on investment. This may limit the level of state support and intervention required. Public bodies operating locally need to remain able to make decisions about resource priorities based on evidence of need. Strong equalities impact assessment processes, plus effective and ongoing community engagement will support this aim

### Business and Regulation

- Q74 Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

Where community led driven schemes are agreed they should be justified on the basis of social, economic and environmental benefits to local communities rather than any direct return on investment. We cannot identify any impact on regulatory burdens in detail, our concern, as stated in earlier responses, is that some of the Bill proposals may conflict with existing processes.

## Environmental

Q75 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.

We recognize that additional levers to bring local assets which may currently be deteriorating and blight to local communities – back into use are required. However as stated the detailed mechanisms for achieving this needs to be carefully worked through.