

Nigel Don MSP  
Convener  
Delegated Powers and Law Reform Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP  
By email: [DPLR.Committee@scottish.parliament.uk](mailto:DPLR.Committee@scottish.parliament.uk)

In 2014 Scotland Welcomes the World



14 December 2014

Dear Nigel

## COMMUNITY EMPOWERMENT (SCOTLAND) BILL

I write in response to the Report of the Delegated Powers and Law Reform Committee on the Scottish Government's Community Empowerment (Scotland) Bill. I would like to thank the Committee for the time and effort you have put into producing this report.

### National Outcomes

**34. The Committee considers that it would be appropriate for the setting and review of the national outcomes to be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure. A more active scrutiny role for the Parliament appears to be justified having regard to the significance of the national outcomes, the discretion afforded to the Scottish Ministers in deciding how the outcomes are presented and measured, and the fact that all public bodies and other persons carrying out functions of a public nature as described in section 1(1) would require to have regard to the outcomes.**

We note the Committee recommendation that the setting and review of the national outcomes should be subject to the scrutiny of Parliament, possibly through scrutiny of regulations subject to the affirmative procedure.

We agree with the Committee's recommendation that Parliament should have a more active scrutiny role in relation to national outcomes, but do not consider that regulations would be appropriate in this context. Instead we propose to bring forward amendments to require Scottish Ministers to consult the Parliament, using the procedure provided for under rule 17.5 of the Standing Orders.

## **Powers to add or remove bodies**

**43. The Committee calls on the Scottish Government to amend the Bill at Stage 2 so as to make the powers in sections 4(6) and 8(3) subject to the affirmative procedure when exercised so as to add bodies to the lists in schedule 1 or section 8(2) respectively. The Committee also recommends that the powers in sections 16(3) and 51(3) be made subject to the affirmative procedure.**

We note the Committee recommendation to amend the Bill at Stage 2 so as to make the powers in sections 4(6), 8(3), 16(3) and 51(3) subject to the affirmative procedure. We agree with the Committee recommendation and will bring forward amendments at Stage 2.

## **Power to issue guidance**

**53. The Bill also makes no provision for an enforcement mechanism, to enforce compliance with the guidance. The guidance must cover matters “about the carrying out of functions conferred on community planning partners and partnerships under Part 2 of the Bill”. This is a broad requirement and the Bill makes no provision for a scrutiny or review mechanism, to review whether any automatically binding matters which may be specified in the guidance are properly included, because they concern the carrying out of functions conferred in Part 2 of the Bill.**

**54. These concerns would not apply if, in a similar way to the existing provision for guidance in section 18 of the Local Government in Scotland Act 2003, there was provision that community planning partners and partnerships would “have regard to” the guidance.**

We note the Committee concerns with section 10 and the recommendation that these concerns would not apply if there was provision that community planning partners and partnerships would “have regard to” the guidance rather than have to comply with the guidance. We agree with the Committee recommendation and will bring forward an appropriate amendment at Stage 2 to replace “comply with” with “have regard to”.

## **Eligible Land**

**66. The Committee draws the power in the new section 97C(3)(a) of the 2003 Act to the attention of the Local Government and Regeneration Committee on the basis that it has concerns about the scope of the power and its intended use.**

We note the Committee concerns with section 97C(3)(a). On 10 December the Cabinet Secretary for Rural Affairs, Food and Environment gave evidence on the Bill to the Rural Affairs, Climate Change and Environment Committee. Regarding this provision the Cabinet Secretary commented that he was reviewing the power and reflecting on the comments that the committee had received and made it clear that if the Rural Affairs, Climate Change and Environment Committee has specific views on the delegated power and how it should be used he would welcome that.



## Effect of Ministers' decision on right to buy

80. The Committee considers that if the use of the word “prescribed” in section 97N is not intended to confer separate and free-standing powers to make subordinate legislation, the Bill should be clarified for Stage 2 so as to remove the scope for doubt over the interpretation of the section and the powers it confers by re-drafting the provision so as to remove the references to “prescribed”.

We note the Committee concerns on the use of the word “prescribed” in section 97N. We are looking at how we might redraft this section to remove the scope for doubt over the interpretation of the section.

I trust this is helpful and remain very grateful to you and the members of your Committee for their work on this Bill. I am copying this letter to Kevin Stewart MSP and Rob Gibson MSP as Conveners of the Local Government and Regeneration Committee and Rural Affairs, Climate Change and Environment Committee respectively.



MARCO BIAGI