

## **Written submission from the Development Trusts Association Scotland**

The Development Trusts Association Scotland (DTAS) is the national member-led organisation for development trusts in Scotland, with a membership of 210. Our members are community-led organisations engaged in the regeneration of their communities through a combination of enterprise, community ownership, creativity and voluntary effort. The most recent survey of members, established that in 2011, DTAS members had a combined annual turnover of £39 million (of which £21 million was derived from non-grant income) and owned assets valued at £51 million. See: [www.dtascot.org.uk](http://www.dtascot.org.uk)

Over the last 5 years, DTA Scotland, has run a Promoting Asset Transfer programme (2009-11) and we currently operate our Community Ownership Support Service (2011 to present). Both these Scottish Government funded activities have focused on the **sustainable** transfer of local authority assets to appropriate community organisations, although COSS has more recently began to engage with other public agencies seeking to explore asset transfer. See: [www.dtascommunityownership.org.uk](http://www.dtascommunityownership.org.uk)

Early this year, a DTA Scotland-led consortium was awarded a contract from the BIG Lottery Scotland and Carnegie UK to run a 3 year community shares programme. Community Shares Scotland aims to create a step change in the awareness of, and knowledge about, this exciting new form of social finance, and will directly supporting tens of community share issues across a range of community sectors. This is likely to include community renewable energy projects, community owned shops and other businesses, and the acquisition and development of community owned assets. See: [www.communitysharescotland.org.uk](http://www.communitysharescotland.org.uk)

DTA Scotland welcomes the opportunity to submit written evidence on the Community Empowerment Bill and this submission to the Local Government and Regeneration Committee draws heavily on the combined knowledge and experience of DTA Scotland as an intermediary organisation, and the collective wealth of knowledge and experience of our membership.

### **To what extent do you consider the Bill will empower communities?**

Over the last couple of decades there has been an almost organic growth in development trusts, community land initiatives and other types of community anchor organisations throughout Scotland. The emergence of these organisations builds on, and complements, the proliferation of community controlled housing associations and tenant co-operatives during the previous couple of decades. These community anchor organisations are running an increasing range of services, activities and businesses, and the approach taken is invariably characterised by the use of community ownership and community enterprise. The progress which these organisations make over the coming years, **will determine the success** of the Scottish Government's aim of promoting community-led regeneration.

DTA Scotland believes that key parts of the Community Empowerment Bill (CEB) reflect and build on this grass roots development, and have the potential to strengthen the ability of communities to take the initiative, be innovative and enterprising, and unlock local creativity. In particular we believe that the CEB has the

potential **to encourage and support many more communities** to become involved in community-led regeneration and crucially, **to make it make it easier** for communities to acquire vital or important physical assets, and / or have a greater role in the delivery of local services. DTA Scotland acknowledges that this will depend to a large extent on getting the detail within the accompanying statutory guidance right, but believes that parts of the Bill provide a useful overview and framework for this to take place.

DTA Scotland particularly supports Parts 3, 4 and 5 of the Bill, covering the areas of community involvement in service delivery, community right to buy and asset transfer respectively. It is however less clear how some other parts of the CEB contribute to community empowerment, and caution needs to be taken to ensure that the range of provisions included, do not confuse rather than clarify what we mean by community empowerment. For example, top down, community engagement, which is a valuable activity in its own right, is not community empowerment. Too often in the past, opportunities to empower communities have been lost on the altar of community engagement.

In general however, DTA Scotland is very supportive of the Community Empowerment Bill. We recognise that some key messages have been picked up within previous consultation phases which we believe have undoubtedly strengthened the Bill. We also believe that there is potential to further refine and strengthen the CEB, and we offer some suggestions which we hope will assist the Local Government and Regeneration Committee's discussions and deliberations.

### **What will be the benefits and disadvantages for public sector organisations as a consequence of the provisions of the Bill?**

DTA Scotland believes that the existence of strong, independent community anchor organisations provides the public sector organisations with an additional, alternative and potentially dynamic partner as they grapple with the undoubted challenges which the public sector will continue to face in these straightened financial times. The ability of community organisations to utilise local passion and access alternative funding to maintain important and heritage assets, to find new and creative ways to deliver (or co-deliver) key local services , to take a more enterprising approach to address some public sector challenges, and to take increased responsibility and build community resilience, should all be regarded as a useful and positive contribution which provides an alternative but complementary option for public sector organisations.

The experience of development trusts suggests that this is precisely what happens when a mature and mutually respectful relationship develops between community anchor organisations and, in particular, their local authority. However, far too often, the emergence of a development trust is seen as a threat, rather than a potential ally and partner, and the relationship is characterised by a lack of understanding and respect, and can often be undermined by bureaucratic inertia.

The Community Empowerment Bill ushers in a new approach which, if it is to have impact and be successful, requires significant culture change within large parts of the public sector. This is unlikely to be easy or quick, but the Community Empowerment Bill has the potential to give out a serious and important message about Scottish

Government intent. DTA Scotland welcomes the recent COSLA report which embraces the principles of subsidiarity and empowerment, and regards this report as an extremely important contribution to the debate and to the necessary culture change process.

**Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill?**

The Minister has made it clear at many public appearances over the last 12 months that legislation will not be enough in itself, to deliver community empowerment, and DTA Scotland totally endorses this position. There are clearly two additional issues which need to be addressed – one of ensuring the sufficient availability of funding and resources which support the activities covered within the Bill, and secondly, as the question suggests, ensuring that the right kind of information, advice and support is available to, where necessary, build the capacity of community anchor organisations to take advantage of the provisions.

DTA Scotland, reflecting the experience and views of our members, have argued consistently that we need to re-think how we do ‘capacity building’ in Scotland if we are serious about supporting community-led regeneration. We need to be clear about whose capacity is being built, and for what purpose. On the basis of this we may need to re-prioritise, reconfigure and refine the capacity building support which is currently available. DTA Scotland would be happy to expand on our thoughts on how we do this, but in the interests of brevity, we would draw the Committee’s attention to two specific areas.

Firstly, the experience of development trusts throughout Scotland is that if we want to build organisational capacity, we need direct (and focused) investment in community anchor organisations. We are delighted that the Scottish Government’s Regeneration Unit recently launched an innovative

‘Strengthening Communities’ programme which does exactly this, and while this is being regarded as a pilot to demonstrate impact, DTA Scotland believes that the roll out of this programme would go a long way to addressing the question of capability.

Secondly, DTA Scotland would argue that we need to recognise that the knowledge and expertise increasingly rests, not within external support organisations, but within the development trusts and other community anchor organisations who are turning around failing assets, developing renewable energy projects, managing landed estates, successfully regenerating high streets, taking over post offices, petrol stations and local shops, etc, etc! The implementation of the Community Empowerment Bill presents an exciting opportunity to recognise this, and develop a peer education and peer support programme which taps into and effectively utilises this knowledge and expertise. Such a programme would be incredibly resource efficient in relation to other methods of capacity building, with the added benefit that the main financial beneficiaries would be community organisations themselves.

## **Are you content with the specific provisions in the Bill? If not what changes would you like to see and why?**

While this submission focuses on the Parts 3, 4 and 5, DTA Scotland would like to reiterate a couple of comments made in previous submissions about Community Planning and offer some a further general observation. We also recognise that some of the issues highlighted below may be best addressed within the development of the statutory guidance, but would welcome assurances that this will be the case.

(a) In the interests of clarity and plain English (key principles of Community Empowerment) we request that Community Planning Partnerships (CPPs) are re-named to describe what they actually do. Whatever your views about CPPs, they are strategic public sector planning organisations, and their title should be amended to reflect this.

(b) The suggestion that CPPs will drive the full public sector reform agenda lacks evidential support. While most CPPs are undoubtedly addressing the integration of public services, there seems no evidence that the kind of increased role for communities envisaged by the Christie Commission will be delivered through CPPs. This is a crucial aspect of the public service reform agenda and thought needs to be given to what kind of mechanism or what space is required to facilitate the engagement of what are, effectively, top down and bottom up processes. Whatever this mechanism or space looks like, it would be the view of DTA Scotland that given the, at best marginal, involvement of communities, it is unlikely to be created within CPPs.

(c) Given the innovative nature of the Community Empowerment Bill, DTA Scotland suggest that the Local Government and Regeneration Committee may wish to seek an assurance from the Minister that the legislation will be reviewed within a specific period of time.

### **Part 3: Participation Requests**

This is a crucial part of the Bill, and one which DTA Scotland believes is a potential game changer. However, a lot has been left to regulation, and there is a danger that the processes will be overly complex and inaccessible. We would therefore welcome a commitment to keep processes simple and in plain English, within the guidance.

While welcoming this provision, we would offer the observation that it may be helpful to separate the ability of communities to **influence** service delivery, from the ability of communities to request to be involved in **delivering / co-delivering** public services. These are quite different activities. While there is a relationship between both aspects, it would appear to us that a more light touch process would be applicable to the former activity, which should also arguably be available to a wider range of community organisations.

We note that there is no right of appeal for this provision, and would request that this is included in the legislation, or that an assurance is given that this is included within the guidance.

## Part 4: Community Right to Buy

DTAS fully supports the creation of a universal community right to buy (CRtB).

We also fully support the efforts of the Bill to simplify and refine the CRtB. Our colleagues in Community Land Scotland and Community Woodland Association have provided detailed comments on the simplification and refinement of the CRtB processes and we would add the weight of DTA Scotland to the relevant comments made on this area within their respective submissions.

While we are pleased to see the inclusion of Scottish Charitable Incorporated Organisations (SCIOs) in the definition of an appropriate community body, we would urge the Committee to request the legal reasons why Community Benefit Societies (BenComs) have been excluded. In our experience many community organisations using a BenCom structure can meet the 'prescribed requirements' of an appropriate community body, and given the increasing use of community shares to fund the acquisition and development of assets, the omission of BenComs from the legislation seems perplexing.

DTA Scotland commends the Scottish Government for introducing a provision for dealing with abandoned or neglected land. However the Committee may wish to explore why SCIOs (and BenComs) are not regarded as an appropriate community body for this provision.

Section 97 requires that the application must specify the owner of the land. If the land is abandoned or neglected, **it may not be possible to identify the owner** of the land. Does this invalidate the application? Given that the issue of establishing clear title is a common problem when dealing with abandoned or neglected land, how will this be addressed?

Also in section 97, is it possible to clarify what is meant by "the community body has tried and failed to buy the land". For instance what happens if the community has tried to buy the land, but the asking price bears no relation to the value of the land?

Section 97 places a duty on the community body to expedite transfer on completion of purchase. There needs to be a public commitment of support (both technical and financial) to ensure that this is not too onerous a burden, which effectively prevents the use of this provision.

We also note that in clause 97S, the valuation of land includes **separation** or **disturbance** value for the owner. If the value of the landowners wider holding is diminished this is the result of them abandoning or neglecting the land. Could the Bill team explore whether the valuation could be limited to market value only.

DTA Scotland has a concern about clause 97T, which provides owners with a right of compensation from the community body. Surely this should be limited to those situations where the application is granted. If the owner loses land due to their own negligence, it does not seem disproportionate that they have to cover their own costs. There is also a danger that owners sue community bodies for high levels of solicitors' fees, etc.

Finally, clause 97X, which allows any interested party to refer questions to the land tribunal, seems to add unnecessary delay to a process which already has sufficient checks and balances. Could the Bill be amended to request that **Ministers** can refer to lands tribunal, if considered appropriate?

## **Part 5: Asset Transfer Requests**

DTA Scotland acknowledges that this area of the Bill has been strengthened in a number of ways since the consultation process. While we fully support the asset transfer provisions, we feel that they could be further strengthened.

DTA Scotland has consistently requested that all local authorities and public bodies should make registers of assets publicly available. This is essential if community bodies are to look critically and pro-actively at what assets would best further their aims, rather simply respond to 'fire sales' of surplus assets (many of which will be liabilities).

In the CRtB provision, there is a useful discretion which allows for a body of less than 20 members, but this discretion is not reflected within Section 53 – Asset Transfer Requests. DTA Scotland is currently working with the development on the island of Canna for whom the ability to take on a couple of assets will be critical to sustaining the small population on the island. While this discretion is likely to be used infrequently, it could be crucial for small, marginalised communities, and we would, therefore, seek to see it included.

DTAS would seek assurance that within the statutory guidance there is a requirement to provide relevant information about public sector assets (conditions surveys, utility costs, etc) to prospective community buyers within asset transfer processes.

The issue of transfer at less than market value is a crucial element within this area of activity, and the Committee may wish to seek an update from the Minister on how relevant revisions of the Scottish Public Finance Manual are progressing. It is imperative that the discretionary power, which local authorities currently enjoy, to transfer assets at less than market value, is extended to other public bodies, and that advice on how to arrive at an appropriate value (perhaps with the help of a third party) is included in the statutory guidance.

The commercial sustainability of an asset transfer will often hinge on the value of the asset and the conditions (eg economic burdens) attached to the transfer. It is essential that there is scope for negotiation on these issues within the asset transfer processes and we suggest that clause 56(2)(a) could be reworded to **encourage negotiated settlements**.

We welcome the introduction of an appeal provision within the local authority asset transfer process, and would request that appeals are considered by elected members. DTAS would seek an assurance that this is reflected within the statutory guidance. It would also be helpful to clarify whether the appeal process will apply to the **valuation** of the asset and the **conditions** attached to the transfer.

## **Part 6: Common Good**

While DTAS welcomes the ‘tidying up’ of Common Good, we would have liked to see this area addressed further within the Bill. We are however satisfied that there will be the potential to address this concern within the Land Reform Bill, which we understand will be brought forward within this administration.

However, within **the specific context of community empowerment**, there are 2 issues which we would like to highlight.

Firstly, we would suggest that it is essential that common good registers make clear reference to the specific area (town or burgh) from which common good assets came. We would seek confirmation that this will be picked up in the statutory guidance.

Secondly, where a common good asset is, in effect, clearly being transferred back to the community from where it came, we would suggest that the Bill removes the requirement for Sheriff Court approval of the transfer. This adds time and money to what is already a sufficiently costly and expensive process for both the community body and the local authority.

### **What are your views on the assessment of equal rights, impacts on island communities and sustainable development as set out in the Policy memorandum?**

It seems reasonable to demand that community bodies who benefit from the various provisions are democratic and inclusive organisations, and can demonstrate this in terms of their governing documents and practice.

The provisions of the Bill should create opportunities for all communities. As referred to above, there will be a challenge in doing this in those communities which are more grant dependent and less enterprising, and which currently lack the necessary capacity to embrace the opportunities which the Bill will create. Pro-active intervention may well be required in communities (particularly deprived or disadvantaged ones) which do not have the kind of strong, community anchor organisations necessary.