

Written submission from Highlands and Islands Enterprise

Introduction

As the Scottish Government's economic and community development agency for the Highlands and Islands, we welcome the legislative framework brought by the Bill. We strongly support the Bill's aims.

HIE is an established advocate and exponent of community empowerment and community-led development. The CEB presents an unprecedented opportunity to create a policy and legislative environment focused on community empowerment, community engagement and with community-centered outcomes. We are pleased to continue to be involved in the CEB development process and provide the following evidence for the Committee.

Extent of empowerment of communities

To what extent do you consider the Bill will empower communities, please give reasons for your answer?

Community empowerment means different things to different communities. Some will want to take on the ownership or lease of assets (land and buildings) and/or delivery of local services. Others may be more interested in engaging with the public sector to directly influence how services are delivered or how public assets are best used.

The Bill usefully differentiates engagement from empowerment; engagement is about giving communities a voice in public sector processes whereas community empowerment is where communities lead change for themselves. The Bill gives all public sector bodies responsibility to create the conditions to encourage and support strong, independent and resilient communities. Ensuring a focus on supporting community empowerment is a key tenet of public service reform. As such we consider the CEB will fundamentally provide opportunities for community empowerment and will do this by both the formative (new) provisions it includes and the provisions which update and strengthen existing legislation.

The extent to which the CEB will empower communities is most significant in the following areas:

Within Part 3 – provisions formalise the opportunity for communities to engage in improvement processes – which has the potential to create a step change in levels of engagement by communities in the design and delivery of public services.

The suggested amendments to improve the effectiveness and efficiency of Part 2 of the Land Reform (Scotland) Act 2003, have reflected well on the experience to date of using the provisions. We believe these will make operation of that Act more workable, and therefore empowering, as a means to realise community asset ownership. The extension to urban land brings equity of the provisions across Scotland.

Part 5 - Asset Transfer Requests confers significant new powers to communities that can appropriately demonstrate their ability to deliver enhanced community benefit through Public sector assets.

Similarly, the enhanced transparency of the extent of common good property through Part 6, enables communities to effectively use participatory, Community Planning and asset acquisition powers within the CEB, directly enabling community opportunities and potential benefit.

Benefits and Disadvantages

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

We comment here from HIE's perspective, covering Parts 2-5 of the CEB only, as those are the most relevant to our work.

The CEB will impact on all public sector agencies and authorities. However the greatest impact may be on local authorities given the provisions which include: Community Planning; participation requests; public asset transfer; common good; allotments; and non-domestic rates. These provisions are equally pertinent to HIE in our role as Community Planning partner and owner of public assets.

Our dual remit of economic and community development means we have a corporate focus on strengthening communities. As such, many of the CEB's provisions can be integrated into our working practices. The CEB also provides an enhanced range of opportunities for us to further support communities to realise their aspirations and growth ambitions.

There are also significant benefits for our pan-Scotland work supporting communities through the Scottish Land Fund and Community Broadband Scotland, where access to assets and ability to influence service design are very relevant. The empowering provisions of this Bill have a significant beneficial alignment with HIE's strengthening communities work.

The Bill will require us to take a range of steps to address its content. In particular, we will revisit and further enhance our internal focus on CPP delivery, we will look to work with public sector partners in receipt of participation requests and review our policy positions around property and asset transfer. New mechanisms to enable us to respond to CEB provisions will be needed and we anticipate being able to work with partners across the region as they develop their own responses. We consider regional coordination and collaboration across public sector authorities on CEB provisions may in some areas be appropriately led by HIE – having consulted our partners.

Whilst not significant in terms of resource implication, these actions arising from the Bill will mean some permanent adjustment corporately as we comply with the provisions of the CEB.

We recognise that the demand from communities, stimulated by the CEB, will undoubtedly have resource implications for all those engaged in community capacity building, locally, regionally and nationally.

Community capability to take advantage of the Bill

Do you consider communities across Scotland have the capabilities to take advantage of the provisions in the Bill? If not, what requires to be done to the Bill, or to assist communities, to ensure this happens?

Many, but not all, communities in Scotland will have the capabilities to take advantage of the CEB's provisions. Communities comprise individuals with wide ranging skills and abilities, but the capacity of individuals to contribute to community development varies due to issues such as competing priorities (employment, personal and family priorities) time availability, financial status and individual confidence. In addition there are cultural, experience and capacity differences between communities. For example, land ownership aspiration and practice is not uniform across Scotland, with that being much stronger in parts of the Highlands and Islands than in other parts of Scotland. The extension of powers to urban communities introduces many more communities to the opportunities which asset based community development offers, and those communities may require support in order to realise the opportunity. Our experience evidences that community-led developments often evolves over time, starting with smaller initiatives, to build up capacity/skills, following which more ambitious undertakings can be driven forward.

There are also differences between rural and urban communities as a result of service provision design/availability between more easily serviced population concentrations and the challenges of servicing more remote, sparsely populated communities. Remote communities for example over time have more frequently exercised their capability to deliver a lifeline or amenity service themselves rather than do without it. In doing so, experience and capability is developed - even if out of need rather than opportunity. The provisions of the CEB may therefore be capitalised on more readily where capacity has been built through earlier experiences.

Public and third sector partners will have an on-going role to strengthen the capabilities of communities across Scotland to ensure equity of access to the empowering provisions of this Bill.

Suggested Changes to Specific Provisions in the Bill

Are you content with the specific provisions in the Bill, if not what changes would you like to see, to which part of the Bill and why?

We are content with the specific provisions of the CEB with the exception of the areas detailed below. We have made suggestions for changes which we believe would enhance the intended outcomes and workable delivery of the legislation. We are focusing our suggested changes on Parts 2 to 5 of the Bill, which relate most strongly to our remit and where we believe we have most value to add.

Part 2 Community Planning

We have commented through earlier consultations that high impact outcomes through CPPs can be seen in those CPPs where strong engagements at the appropriate leadership level by partner organisations is in place. Where this is the case, the partnership can identify shared and lead responsibilities for the CPP outcomes and enable strong collaborative delivery. The CEB substantially strengthens CPP duties and this will support the process of mutual commitment to a shared locality agenda and allow innovation in public service design, planning and delivery.

The proposed approach to determining the make-up of community planning partnerships is proportionate and provides the necessary flexibility to ensure all relevant stakeholders are included in the setting of local priorities and outcomes. However, we are unclear as to the merits of establishing the proposed 'corporate bodies' as set out in section 12 within part 2 of the draft CEB. Effective collaboration and the established understanding of the advantages to CPP delivery through powerful partnerships should negate the requirement to establish new structures in this manner and would therefore suggest there is no need for its inclusion within the CEB.

Clear articulation of local outcomes provides valuable direction to operational teams across the public agencies; however, measuring progress requires reliable, timely and informative small area statistics. In many sparsely populated areas the availability and robustness of socio-economic data does not easily allow for the tracking of changes over time – at a sufficiently granular level to inform policy decisions. Complementing the objectives of the CEB, it would be helpful to in tandem review the approach taken to capturing and publishing small area statistics to ensure progress reporting can be undertaken in a meaningful manner.

The CEB policy memorandum suggests (para 41) that the list of key partners will be extended and schedule 1 indicates this. However, this does not appear to be consistent with Part 2 Section 8 (Governance). It may be helpful for CPPs to determine their essential partners to reflect local circumstances and priorities. In addition, under this section and in schedule 1, given the connected economic development remit of HIE and Scottish Enterprise, it would be reasonable for the Enterprise Agencies to agree together with CPPs the most effective representation (rather than require both to be represented across the Highlands and Islands, which appears to be indicated).

Part 3 Participation Requests

We welcome the broad definition of 'community-controlled body' and 'community participation body' as by adopting this inclusive approach and not defining community in too narrow a context will enable a range of organisations with diverse interests to put into practice the provisions of the CEB.

The criteria as detailed for the refusal of a participation request appear to be proportionate. However, issues around consistency may arise if the criteria are open to interpretation. Guidance notes on each individual criterion would help in this respect, and we would be pleased to offer input here in due course. Additionally, it

may be advisable to clarify whether all, or some, of the criteria are required to be met as detailed in Section 19(3)(c). Parity of the value(s) placed on qualitative and quantitative outcomes in the decision process would also be relative to include.

Outcome improves process - where a public service authority does not have an outcome improvement process in place (Section 20(3)), and subsequently Section 23, the consultation period from the time of agreeing a participation request to agreeing the outcome improvement process and subsequently establishing the process is extensive. This time period, as currently detailed in the Bill, may have a detrimental effect on the momentum of the community participation body making the request. Similarly, the CEB does not identify a maximum timeframe for the outcome improvement process to be completed within. Whilst we recognise that this may be agreed once the process has commenced, a maximum time period for the process would be beneficial for all parties involved as well as bringing clarity and certainty.

The reporting required within the CEB may be further enhanced if the learning from successful participation requests was linked more strongly to the Community Planning Process, and enhancing early community engagement in the design of services, as this may reduce the need for and number of participation requests in the future.

Part 4 Community Right to Buy Land (CRtB)

The provisions will extend the scope and flexibility of the CRtB and make the existing legislation more workable. Noted below are a number of detailed points for consideration which we would be pleased to discuss further with officers or the Committee.

31(4): *Late registration relevant work/steps requirements* Removing 'good reasons' is helpful as this normalises late registrations. For a variety of well documented reasons late registrations are very much the rule rather than the exception.

31(4)(a)(i): It would be most helpful if this subsection enables communities to progress a late registration if they have considered purchase of an asset, specific or general, as detailed in a local development plan.

We advocate communities taking a strategic and holistic approach to their development through the establishment of whole community plans. Amongst other identified needs, these plans are likely to include asset ownership aspirations of specific or general nature. These plans involve widespread and detailed community consultation and are resource intensive for the community. As such they tend to have longevity of 3-5 years or more. If a whole community plan containing relevant asset ownership aspirations is considered appropriate evidence under the proposed 'taking relevant work' provision then this would be welcome. If so, it would be important for these actions to be considered 'eligible' for the lifetime of the plan. Consideration of guidance notes to clarify eligible relevant work/steps would be beneficial.

31(4)(aa)(iii): It is commonplace for the initial work to be undertaken by a community council or a working group with the intention that another body

would pursue the CRtB. Pursuing a CRtB is a significant consideration and we advise communities to establish a community body (compatible with Section 34 of the Act) only when they are confident an application is to be made. Consideration should be given to decoupling the requirements for relevant steps/relevant work *and* the application being made by the [same] community body. This is an appropriate practical approach and does not render the initial work undertaken less relevant. Rather, it preserves capacity within the community as they consider a CRtB.

37(6) *Appointment of balloter* Much of this information has already been submitted to Ministers as part of the application process and as Ministers supply background information to the balloter in the proposed section 51A(2) we do not see any merits in this subsection. Further, we are not persuaded of the need for the balloter to hold this information as the balloter's role is solely to undertake the ballot.

48 *Abandoned or neglected land – compulsory purchase powers* The inclusion of compulsory purchase powers, as a lever of last resort when all other efforts have failed and in certain considered circumstances, is noted. However, we would emphasise the need to be mindful of the local and wider consequences of inclusion of compulsory purchase provisions in contemporary legislation, especially where pre-existing powers are in place, for instance within other public body legislation. Having considered in detail the application of the CEB, we note the possible role of compulsory purchase as a mechanism (evident from thecrofting community right to buy (CCRtB) where the lever of a form of compulsory purchase has been a largely passive facilitator). However, we would favour resort to existing compulsory purchase powers rather than re-prescription of these within the CEB. To ensure a balanced approach, we would only wish such powers to be available once a willing seller (negotiated) route to ownership has been exhausted and where a purchase by the community is demonstrably in the public interest.

Abandoned or neglected land

Although supportive of this principle, we consider the proposed new section, Part 3A, could be strengthened by additional definitions and information, which could be provided as guidance notes.

For instance, how might the difference between abandoned and neglected be distinguished? What criteria might “prove” a land asset is abandoned or neglected? We are not aware of an obligation on an owner not to abandon or neglect their property – might this obligation be an unintended implication through the CEB as presently worded? Consideration might usefully be given therefore to definitions, terminology and the ability for their consistent applications in urban, rural and remote areas.

Proving continuing ownership – this requirement will be challenging to demonstrate and it is unclear how the proving of ownership is connected to the intentions of sustainable development and the mitigation of abandoned/neglected land.

As drafted, the Part 3A provisions reflect the content of the CCRtB which is widely acknowledged to be challenging for crofting community bodies to use. We welcome the recent development to address CCRtB through the CEB and we will comment fully within any consultation offered in respect of these matters.

Part 5 Asset Transfer Requests

Public assets account for just over 10% of Scotland's land area (excluding the seabed) so it is beneficial to facilitate the transfer of public assets to communities where this will lead to enhanced outcomes and potentially a reduced demand for public services. Whilst supporting the intent of these provisions – which we consider to be appropriate and balanced - their effectiveness will be determined to a great extent by the regulations. Consultation on the regulations would be welcomed.

51: *Meaning of 'relevant authority'* We suggest the Bill would be strengthened and simplified by extending 'relevant authority' to all Scottish public sector bodies.

52: *Asset transfer requests* To promote a connection between the community and the asset, we suggest the community transfer body is required to demonstrate a connection with the asset. NB As currently drafted, a large conservation body or third sector organisation operating at a national or UK level may satisfy the community transfer body requirements – if this is unintended, and local communities/communities demonstrated interests connected with asset are intended, wording may benefit from revision.

54: *Asset transfer requests - regulations* We recommend the regulations identify the criteria to be demonstrated by the community transfer body's asset transfer request. These could include:

- Information/evidence of organisational capacity
- A sustainable management/development/business plan
- Community involvement and evidence of community support
- Information on who/what will benefit and how they/it will benefit

55: *Asset transfer requests - decisions* We have a portfolio of industrial/commercial premises throughout our region, which we deploy to assist in achieving wider economic development. Our policy is not to be a long-term landlord but to sell on properties when appropriate. We favour an outcomes based approach regarding the assessment of asset transfer requests. This would be consistent with Parts 1 and 2 of the CEB and will ensure maximum impact and benefit is achieved taking full cognisance of local circumstances. For example, it is our standard practice to offer sitting tenants the first refusal to purchase the properties they occupy and we have also supported asset sales to community bodies. In the event of interest in one of our assets from both the sitting tenant and a community organisation we would wish to consider the merits of both these proposals. We are confident section 55(3) accommodates this approach.

Inclusion of the following, in our view, would further strengthen these provisions:

The establishment of a **national public asset register**; the Minister's announcement for all public assets to be recorded in the Land Register will facilitate this.

The experience of the Community Right to Buy and National Forest Land Scheme is that communities often respond to opportunities. We therefore suggest these provisions extend to the **disposal of surplus assets** by relevant authorities.

Finally, there is scope for communities to register an interest (CRtB) in public assets and common good land. We assume both routes will be available unless a prohibition is applied and suggest the guidance notes address such matters. At present there are examples of public authorities willing to sell assets to communities, yet require the community to first register an interest in the asset via the CRtB. This is a complex and demanding undertaking for the community and unnecessary where there is a willing seller. However, that public authorities currently use the process might indicate a preference to adopt an established process (potentially overlooking complexity for communities) over one which is more streamline and potentially effective. The opportunity exists within the CEB therefore to require public authorities to use the most efficient asset transfer mechanisms available for both the public authority and the community body.

Equal Rights Impacts as set out in Policy Memorandum

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

The Bill explicitly recognises the enabling power of the current duties placed on public bodies by the Equality Act 2010 and the Public Sector Equality Duty (PSED) and acknowledges that its provisions are compatible with the European Convention of Human Rights. These are powerful foundations on which to build on the realisation of equal rights through community empowerment (e.g. when making asset transfer or participation requests), making explicit the provisions on equality impact assessment already covered by PSED. The requirement to form Community Planning Partnerships strengthens opportunities to develop partnership equality outcomes which reduce inequalities through collective responsibility and action, ensuring an equalities dimension is integrated into place-based policies and activity, which are recognised as having a particularly beneficial impact on some groups of people in both urban and rural settings.

The provisions on participation requests and addressing concerns that community bodies are open, inclusive and truly represent their communities have the potential to significantly increase the realisation of rights for some groups of people. This strengthens community empowerment by creating the right for communities to be engaged and to be supported by public bodies, taking in to account the potentially differing needs of individual community groups, whether rural or urban.

The Policy Memorandum summary of the EqIA carried out focusses on only one element of the PSED, that the Bill is not discriminatory. Much of the impact of the Bill in achieving equality, as outlined above, will be accomplished through public bodies' influence in maximising opportunities to advance equality of opportunity and

foster good relations, the other elements of the General Equality Duty. This may be outlined in greater detail in the full EqlA document.

Determination of the compatibility of right to buy proposals as they affect the landowner and the community require legal consideration and we are aware of the detailed legal engagement undertaken during the CEB development period.