

## **Written evidence from John Mundell, Chief Executive, Inverclyde Council**

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

The Bill will empower communities by establishing processes through which they can:

- Have influence over the design and delivery of public services
- Participate in community planning: and
- Acquire and use buildings and land for community benefit.

However, the extent of this empowerment is constrained by a number of factors:

- Not all communities will have the capability or desire to take advantage of the provisions within the Bill
- Terms like consultation and engagement are not defined and could lead to compliance without achieving empowerment (a missed opportunity to build on the Standards of Community Engagement.)
- Empowering concepts such as co-production, doing things with communities, not for or to them and developing asset based approaches are not supported by this Bill, as communities are not held to be equal partners.

Further detail regarding these factors is outlined below.

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

One significant element of the legislation is the requirement on community planning partners to commit resources, both towards the delivery of local outcomes and for securing the participation of community bodies. This is proving challenging to map, particularly as many partner organisation's budgets are agreed across more than one Community Planning Partnership area, and there is not the freedom in budget setting that would facilitate the easy commitment of resources to particular projects.

Issues for Community Planning partners could include what resource they currently have available within services to respond to community bodies and the capacity of officers to be able to engage community bodies effectively. In order to engage effectively with communities across a range of partner services, training may be required which will have a cost attached. In addition, the development of a report of the process, and ongoing updates on changes in the outcomes and related matters will require dedicated officer time. In the current climate with ongoing budget savings being made, this could become even more problematic, with fewer staff across partner organisations available to dedicate to these tasks. This is, however, all dependent on demand, which at present is difficult to predict.

**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?**

Not all communities will have the capability or desire to take advantage of the provisions within the Bill. This is particularly true for disadvantaged and marginalised communities who may be unaware of the rights afforded to them by the Bill or lack the capacity to claim them.

The Bill does make reference to CPPs contributing 'such funds, staff and other resources as the CPP considers appropriate' to assist with capacity building, but in the present financial climate this is unlikely to be achievable.

The capacity building required to support those communities who currently lack the capacity to take advantage of the provisions of the bill, is currently under-funded across Scotland, and there has been no indication from the Scottish Government that funding would be made available to carry this out. In a climate of budget cuts and service reduction, it is unrealistic to expect local authorities to be able to provide the appropriate amount of support for disadvantaged communities as is required, without additional budget provision.

**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?**

**Part 1 National Outcomes**

National Outcomes have been in place for some time, however, enshrining these in legislation in a Community Empowerment Bill without detailed reference to the consultation process is a missed opportunity for Scottish Government to make this consistent with the spirit of the Bill and to make it clear that this will not be a centralised process requiring ministers only to 'consult such persons as they consider appropriate'.

This concern applies to the involvement of local community planning partnerships in the development of national outcomes as well as the involvement of communities within those partnerships.

Paragraph 2 should therefore be changed to encourage more robust engagement in the development of National Outcomes.

**Part 2 Community Planning**

Section 4: Paragraph 25, requires CPPs to 'consider which community bodies are likely to be able to contribute to community planning' and 'to make all reasonable efforts' to secure and enable their participation. This neither encourages CPPs to consider community bodies as equal partners nor empowers community bodies to see themselves in this way. Without guidance on when and how consultation should take place, this may not lead to the type of empowerment envisaged in the Bill.

### **Part 3 Participation Requests**

The requirement on a community body making a request to 'explain what experience it has of the service and how it could contribute' is reasonable, however, as well as the requirement for CPP's to report on the impact of their engagement on the specified outcomes, there needs to be an expectation of ongoing involvement of the community bodies and its members as well as the community planning partners, as in most circumstances the 'improved' outcomes will not be a one off quick fix. The practice of reporting on the impact of engagement should not be restricted to those who have formally made a request to participate.

### **Part 4 Community right to buy**

With reference to Part 4, in so far as it may relate to the purchase of land in the ownership of a local authority, (and also per below to Part 5 on asset transfer requests), there is no explicit provision on how these parts of the Bill will interact with the following:

- The obligation on a local authority to obtain best value in a disposal;
- Title restrictions affecting disposal; or
- Common good issues.

The absence of such provision will mean these other considerations will still apply and the law in that regard will be unchanged. Nevertheless it would be a benefit if this was clarified in the body of the Bill by expressly stating either that they still apply, and therefore need to be considered in such applications or that they do not apply and can be discounted when considering such applications.

Greater clarification is required of the Local Authority role in this process in general. We foresee an expectation from community groups that they will be able to ask Local Authorities to exercise compulsory purchase powers to acquire such land. If such powers can and are to be exercised, then there will also be a question as to who will meet the cost of that process.

We also have a concern as to the sustainability of groups exercising this right, as there is a possible danger in that there will be an expectation on Councils to step in and take over assets acquired under Community Right to Buy should the acquiring organisation, for whatever reason, be dissolved or simply fall into inactivity. This would probably be more likely in respect of assets in a non-rural setting.

One of the key issues for local government will be dealing with the demand for community right to buy land and how to distribute the demand. This could create significant legal and capacity issues within local government which are further compounded by the current economic climate and the pressures on local authority resources.

In addition, the provisions within the Bill could lead to an increase in communities seeking to check ownership of land. Again, this could have serious resource implications for local authorities.

The requirement that a Scottish Charitable Incorporated Organisation (SCIO) must not have fewer than 20 members will be restrictive and could reduce the number of SCIO's that are able to take advantage of the provisions within the Bill.

## **Part 5 Asset transfer requests**

There are potential additional costs should community groups require support to go through an asset transfer process. Resource will be required to provide community groups with that support. There are also potential future costs for relevant authorities should the community group holding an asset cease to exist, with a potential expectation for the relevant authority to take back ownership and responsibility for the asset.

The comments above regarding the absence of explicit comment on interaction between Part 4 and the following issues are also applicable to Part 5:

- The obligation on a local authority to obtain best value in a disposal;
- Title restrictions affecting disposal; or
- Common good issues,

## **Part 6 Common good property**

A number of issues with regards to Part 6 have previously been highlighted by this authority and others as part of the previous consultation process. However, this has not resulted in amendment to the Bill.

This Bill is an opportunity to include immediate improvement to the current law on common good, namely addressing the question as to whether or not a Local Authority may re-appropriate under S73 land that is common good land in respect of which "a question arises as to the right of the authority to alienate". This is a grey area that has been left by the wording of S75 of the Local Government (Scotland) Act 1973, and can act as a barrier to effective use of Local Authority assets. The recent example of the Portobello Park/High School proposals demonstrates this.

This Bill is also an opportunity to provide clarification on the legal definition of common good. The consultation document circulated in respect of the draft bill acknowledged at para. 47 that "at this stage our view is that there are significant difficulties in framing a satisfactory definition [of common good]". It is suggested that imposing an absolute obligation on Local Authorities to produce lists of common good assets in the context of those acknowledged significant difficulties:

- Is exposing Local Authorities to a significant risk of judicial review, with resultant resource and financial implications;
- May also result in such authorities adopting a risk averse approach, in that in cases of doubt over the common good classification of an asset, then it be classed as common good, which it is assumed is not the outcome that the Scottish Government sought in promotion of this Bill; and

- May furthermore result in an increase in the barriers to the effective use of Local Authority assets, which it is again assumed is not the outcome that the Scottish Government sought in the promotion of this Bill.

In short, the absolute nature of the obligations imposed under the Bill combined with the continued uncertainties around the definition of common good will present Local Authorities with a resources demand and a risk of challenge. Both of these have financial implications, at a time when they, like all public bodies, are operating under funding limitations.

Whilst it is accepted that defining common good is not an easy task, the inclusion of a statutory definition would be a significant improvement providing clarity for both local authorities and the public at large.

It is noted that this issue is discussed in the Land Reform Review Group's recent report "The Land of Scotland and the Common Good", and that therefore further provision may appear in the recently announced Land Reform Bill. Nevertheless, our comment on the present Bill must proceed in the context of the current law.

No distinction is made as regards heritable and moveable common good assets in terms of the draft Bill. The task of a common good assessment on heritable property, with the benefit or recorded deeds, is a difficult enough task. When dealing with moveable assets, where in many cases there are no such records, this task becomes significantly more difficult and may in some cases be impossible. If the intention of the Scottish Government in promoting this bill is that various provisions relating to common good extend to both moveable and heritable assets, in the knowledge of the resource implications this has for local authorities, then the wording as it stands achieves that. However, if the intention was only that heritable assets be covered by one or all of those provisions, then amendment to that effect is required.

The provision requiring consultation on the disposal or change of use of common good assets impose greater restrictions than currently apply. We consider that this creates a greater barrier to effective use of these assets.

- Firstly, no distinction is made between "alienable" and "inalienable" common good, or to adopt the wording of the 1973 Act assets where "a question arises as to the right of the authority to alienate" and assets where "no question arises as to the right of the authority to alienate". By way of explanation, common good assets include many assets that may not be typically expected to be characterised as "common good" but nevertheless as a matter of law are. For alienable common good, a Local Authority is under the current law at liberty to dispose of or re-appropriate under S73 of the 1973 act. If the intention is that consultation requirement in this Bill is to cover all common good, both the higher profile "inalienable" assets and the less controversial "alienable" assets, then that is achieved. However, if the intention was not to include the "alienable" assets amendment to the wording is required.
- Secondly, the obligation is to consult with all community councils in the local authority area, not simply those connected with the Burgh whose common good the asset forms part of. Whilst current consultations prior to seeking S.75 consent for disposal of an inalienable common good asset need not

necessarily be restricted to community groups in the Burgh in question, they would not in all cases extend to all community councils within a local authority area. This will present significant difficulties for local authorities covering a large geographical area. If this is not the intended result, then again an amendment to the wording is required.

## **Part 7 Allotments**

The financial memorandum highlights that there will be costs incurred by local authorities regarding allotments depending on how much provision is required to meeting local authority targets and how much provision is actually possible. There will be costs to hold and maintain waiting lists and a major officer resource required to produce and report annually on a food growing strategy. The memorandum does not state whether the Scottish Parliament will make funding available for authorities to meet these costs.

Should there be an increased demand for allotments such that trigger points are reached, then there will be a resource issue both in officers' time and funding in order to comply with the provision to provide allotments.

More emphasis and or explanation on the "reasonableness" of any request to enable resources more time to respond and react to demand should be incorporated.

## **Part 8 Non-domestic rates**

This power may be useful in allowing the Council to be responsive to local problems or needs and to have the flexibility to offer a range of options which could help new businesses to locate in the area, to retain current businesses, sustain local employment and improve the local economy.

The scheme would require to be carefully thought out as 100% of the cost of any relief awarded would be met by the Council.

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

With respect to equal rights, the Bill may not have the impact it seeks if marginalised and disadvantaged communities are not assisted to become aware of this legislation and to understand the rights it offers. These groups may also lack the capacity to claim these rights without additional support.