

Health and Social Care Alliance Scotland

Briefing: Draft Community Empowerment (Scotland) Bill and further policy proposals, November 2013

Introduction

The draft Community Empowerment (Scotland) Bill was published by the Scottish Government on 6 November 2013. This follows an initial consultation on a proposed Bill which closed on 26 September 2012 and which attracted 447 responses from across the public, private, third and community sector organisations as well as individuals.

This briefing has been prepared to summarise and reflect some of the ALLIANCE's initial reflections on the draft Bill; however, the ALLIANCE will be working in partnership with members over the coming weeks and months to further develop our position in relation to the draft Bill.

Key Points

- The Community Empowerment (Scotland) Bill is intended to provide a legislative underpinning that will support and drive community empowerment and the reform of public services.
- The proposals of this Bill aim to make it easier for communities to take ownership or make more effective use of land and buildings, increase transparency and strengthen the voice of communities in how common good assets are used and how services are delivered.
- Proposals are intended to give local authorities more powers to take actions which support communities, and will encourage approaches in which partnership working combines the physical, financial and human assets of the public sector and communities, working more effectively together to deliver a better Scotland.
- The draft Bill would enable community bodies to submit a request setting out plans for public sector land and buildings that they would be interested in owning or using

- The draft Bill aims to assist community bodies to participate where they believe they could improve the outcome of a service. This will include enabling community bodies to make requests to public bodies that deliver that service, asking to take part in a process to improve outcomes.
- Proposals would place a new statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. They also place a requirement on local authorities to consult with community councils and other community bodies when establishing the register.
- The Scottish Government also proposes to bring forward future amendments to the legislative framework to strengthen community planning processes. This will include placing an increased on outcomes, placing new duties on partner bodies to fulfil their functions as part of Community Planning Partnerships and ensuring that external scrutiny is provided.
- The document also seeks views on policy proposals including:
 - extending the Community Right to Buy scheme
 - new local authorities duties related to allotments
 - local relief schemes for non-domestic (business) rates
 - that the Community Empowerment (Scotland) Bill includes a duty on the Scottish Government to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland and report on these on a regular basis

Bill overview

Part One – Asset Transfer Requests

Sections 1 & 2: Places a legal definition on the terms community bodies and relevant authorities for the purposes of Part One of this this draft Bill.

In short, community bodies are organisations run by members of a community and defined as such in their articles of association, whereas relevant authorities are largely statutory agencies.

Section 3 & 4: “Asset transfer requests” allows for community bodies to make an asset transfer request of relevant authorities.

An asset transfer request enables the relevant authority to transfer ownership, lease or confer rights in respect of land to a community body. Such requests must be made in writing, specifying:

- The land to which the request refers
- Whether the intention is to own, lease or manage/occupy the land
- Other terms and conditions applicable to the request
- The reasons for making the request
- Benefits such a request would have

Section 4 of the draft Bill allows Scottish Ministers to make further provision about such requests within regulations.

Section 5: “Asset transfer requests: decisions” makes provision that the authority must decide whether to agree or refuse a request, based on:

- The reasons for the request
- Information provided in support of the request
- Whether the request promotes/improves:
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing
 - other benefits
- Comparison of the benefits to those of any other proposal (from
- Obligations on the relevant authority that might prevent, restrict or affect its ability to agree to the request
- Other matters that the authority considers relevant

Scottish Ministers will clarify in regulations the timescale for a decision on a request, the information to be contained and the manner in which such a notice must be given.

Section 6 makes provision for where an asset transfer is agreed that the decision notice must state the terms and time period of the agreement and the timescale must be of at least 6 months.

Section 7 specifies that where an agreement to transfer assets has been made the relevant authority must not sell, lease or dispose of the land.

Section 8 enables community bodies to appeal where either:

- an asset transfer request is refused

- the terms and conditions of the agreement differ from those specified in the request
- The relevant authority does not give a decision in time

Appeals can be made to Scottish Ministers (unless the relevant authority is the Scottish Ministers or a local authority). Ministers will bring forward regulations to prescribe the procedure, manner and time limits for appeals.

Scottish Ministers may allow or dismiss an appeal, reversing or varying any part of the decision of the relevant authority and issuing a direction on next steps to be taken. The direction must require the relevant authority to issue a further decision notice specifying terms and conditions, stating that community bodies must submit an offer to acquire ownership of the land.

Section 9 makes provision for circumstances in which a community body applies to sub-lease land from a relevant authority.

Section 10 allows the relevant authority to decline to consider a request where:

- The new request relates to matters that are the same or similar to those contained in a previous request
- The request was made in the period of two years ending with the date on which the new request is made
- The relevant authority refused the previous request (whether after appeal or not)

Part Two – Public Service Delivery

Section 11 & 12 places a legal definition on the terms “community body” and “public service authority” for the purposes of this draft Bill.

Community body refers to Community Councils or bodies with a written statement of aims/purposes, rules governing membership or a description of a community for which an aim or purpose mentioned includes the promotion of a public benefit.

Public service authorities are a list of public bodies as referred to in Schedule 2 of the draft Bill. These include Health Boards, local authorities, colleges and others.

Under **Section 13** a community body may make a request to a public service authority to participate in an “outcome improvement process”. An outcome improvement process is a process which has been established by the authority to improve an outcome that results from the provision of a public service.

This provision intends to strengthen “bottom up” processes by supporting community bodies to be more proactive in saying which issues they want to have their voices heard on, how they want to change things for the better and promote the part they themselves can play in delivering that change – including service provision.

Participation requests must be made in writing and can be made jointly by two or more community bodies. Requests must specify:

- How the community body’s involvement can improve the process
- Why they consider they should be involved
- Details of knowledge, expertise and experience they have
- An explanation of the improvement the body anticipates may arise

Section 14 enables Scottish Ministers, through regulations, to make further provision about such requests. This may include the manner in which these requests are made and the procedure to be followed.

In reaching a decision about a participation request, **Section 15** stipulates that the authority must take into consideration:

- The reasons supplied in the request
- Other information in support of a request
- Whether the request promotes/improves:
 - economic development
 - regeneration
 - public health
 - social wellbeing
 - environmental wellbeing
 - other benefits
- The nature of the community described in the community body’s constitution

The authority must agree to the request unless there are reasonable grounds for refusal. Scottish Ministers will prescribe through regulations the timescale for notice of such a decision to be given.

Section 16: “Decision notice: information about outcome improvement process” makes provision where an authority agrees to a participation request and an outcome improvement process is underway, the decision notice must:

- describe the improvement process
- specify what stage has been reached

- explain how and to what extent the body is expected to participate
- if others participate in the process, describe how they participate

Where such a process is not underway, the decision notice must state how the proposed process will operate, expected participation from the community body making the request and how any others bodies are expected to participate.

Section 17 clarifies the terms of communication of a proposed outcome improvement process to community bodies. Authorities must give 28 days notice to the community body, containing details of the outcome improvement notice to be established and specific information about the process.

Outcome improvement processes: Establishment and modification

Section 18 stipulates that the outcome improvement process must be started within 90 days of the notice period being given to community bodies and then maintained by the public service authority.

Modification of the process – in **Section 19** – can only be undertaken following consultation with the body and information must be published (details to be published in regulations).

Reporting

Section 20: Where a participation request has been made and the outcome improvement process is complete, the public service authority must publish a report containing:

- A summary of outcomes of the process
- How and to what extend the participation of the community body influenced the process
- How the authority intends to keep others informed of changes and other matters related to the outcomes

Section 21 specifies interpretation of terms in Part 2.

Part 3 – Common Good Property

Section 22 & 23: Registers. Each local authority must establish and maintain a register of property as part of the “common good”. This is the “common good register”.

Local authorities will determine how they publish this list and must notify and invite involvement from community councils and community bodies of which they are aware. Representation will be made on whether proposed properties to be included are part of the common good and identifying other properties which are considered to be.

Local authorities must make the common good register available, free of charge, to the public at reasonable times and online.

Local authorities must adhere to guidance from Scottish Ministers. Before it is issued, any guidance must be consulted on with local authorities, community councils and any community bodies Scottish Ministers see fit.

Section 24 & 25 makes provision where a local authority is considering disposing of a property or changing the use to which it is put. Before taking any such decision the local authority must publish details notifying community councils and community bodies mentioned in the publications and inviting representation. The local authority must then give due regard to the representations.

Local authorities must adhere to guidance on disposal or change of property use from Scottish Ministers. Before it is issued, any guidance must be consulted on with local authorities, community councils and any community bodies Scottish Ministers see fit.

Section 26 specifies interpretation of terms in Part 3.

Part 4 – Liability for expenses under Building (Scotland) Act 2003

Part 4 of the draft Bill inserts new sections into the Building (Scotland) Act 2003 which allow for a “notice of liability for expenses” to be registered in the appropriate property register in relation to a building on which work has been done.

Where such a notice is registered, if the building is sold, the previous owner and the new owner become severally liable for the debt; in other words, it can be recovered from either of them.

In practice, a potential buyer (new owner) will want to ensure that the debt is paid and will negotiate the purchase price accordingly. If the new owner pays the expenses, they may recover that amount from the former owner (seller), if the former owner is liable.

The provisions set out the procedures to be followed and the administrative expenses and interest which can be charged.

Part 5 – General

Part 5 provides provision for Scottish Ministers to act in future. This includes:

- Enabling the Scottish Government to issue subordinate legislation
- Enabling Scottish Ministers to issue provisions and amendments they see fit for the purposes of, in consequence of, or for giving full effect to, any provision of the Act
- Establishing the principle that the Bill will come into effect the day after it achieves Royal Assent
- Stating that short title will be the Community Empowerment (Scotland) Act 2014

Further policy proposals

Improve and extend Community Right to Buy

The Scottish Government has four priorities for taking forward the community right to buy as part of the agenda for land reform in Scotland:

- The extension of the community right to buy to all of Scotland, including urban areas and settlements with a population of 10,000 or more, which are currently excluded from the provisions, where Scottish Government is satisfied that it is in the public interest.
- Considering whether there should be a compulsory right to buy for communities, and the circumstances in which it could be used.
- The streamlining of the legislation after the first decade of its use.
- Improving the process of the community right to buy in order to remove barriers and increase opportunities.

The consultation paper seeks on how it should take forward these proposals.

Strengthening Community Planning

The Scottish Government is also seeking views on potential amendments to the Community Planning framework to create the right legislative approach to effective community planning in the future.

They aim to:

- Increase the emphasis placed on planning and delivering outcomes
- Put Community Planning Partnerships and their key roles and responsibilities on a statutory basis

- Place new duties on partner bodies so that Community Planning Partnerships fulfil their responsibilities and each partner's role is fully reflected through governance and accountability arrangements. This would include integration authorities referred to in the Public Bodies (Joint Working) (Scotland) Bill
- Ensure external scrutiny is provided by the Accounts Commission, the Auditor General and other bodies

The draft Bill and consultation documents are available from the Scottish Government's website at the following address:

<http://www.scotland.gov.uk/Publications/2013/11/5740>

Next steps

The Scottish Government is consulting on the draft bill and would like responses by 24 January 2014. Having considered the consultation, the Scottish Government will present the Bill to the Scottish Parliament during 2014.

If you would like to discuss any of the topics raised within this briefing or to request any further information, please contact Andrew Strong, Policy and Information Officer on 0141 404 0231 or email: andrew.strong@alliance-scotland.org.uk.

About the ALLIANCE

The ALLIANCE is the national third sector intermediary for a range of health and social care organisations. The ALLIANCE has nearly 400 members including large, national support providers as well as small, local volunteer-led groups and people who are disabled, living with long term conditions or providing unpaid care. Many NHS Boards are associate members and many health and social care professionals are Professional Associates. Commercial organisations may also become Corporate Associates.

The ALLIANCE's vision is for a Scotland where people who are disabled or living with long term conditions are and unpaid carers have a strong voice and enjoy their right to live well.

www.alliance-scotland.org.uk