Subject: Community Empowerment (Scotland) Bill Consultation

1. Purpose

1.1 To advise Leadership Panel about the consultation on the Community Empowerment (Scotland) Bill by the Scottish Government and to seek agreement to the Council’s consultation response.

2. Recommendation

2.1 It is recommended that the Leadership Panel:

(1) approves the Council’s draft consultation response to the Community Empowerment (Scotland) Bill for submission to the Scottish Government; and

(2) authorises the Head of Policy, Community Planning and Public Affairs to submit to the Scottish Government by the closing date of 24 January 2014.

3. Background

3.1 The Scottish Government is currently undertaking a second stage consultation on the Community Empowerment (Scotland) Bill with responses requested by 24 January 2014. A first stage consultation took place in 2012 and had 447 responses including a response from South Ayrshire Council. The latest consultation covers three main areas; draft legislation reflecting the earlier consultation; detailed policy questions not yet drafted into legislation; and, new policy areas. The full consultation document can be accessed at:


3.2 The draft legislation is underpinned by the view that empowering communities, and making the most of the talents that exist in our communities will assist in delivering the pillars of public sector reform and help to achieve the delivery of high quality and improving public services. The Bill also expresses support for strong local democracy and local decision-making and links this to improving outcomes for individuals and communities across Scotland.

3.3 In its introduction, the draft Bill states that ‘the Scottish Government strongly values community led action’ and that the cornerstones on which the proposals for the Bill are based are ‘empowering our communities and making the most of the talents that exist within our communities’. The Bill is intended to be based on ‘…supporting local democracy and local decision-making…focused on improving outcomes for individuals and communities across Scotland’. The draft bill is concerned with technical processes as well as community empowerment processes. While a large part of the draft Bill is concerned with buildings and land issues there are also significant parts of it relating to community involvement in improving service delivery and community planning. ‘Community Engagement’ is referred to as a ‘request to participate’. Building and Land ownership are seen as key elements of empowering communities and facilitating community led action.
3.4 **Main Elements of Consultation**

- a new way for communities to take on responsibility for public sector land and buildings;
- opportunities for communities to be more involved in shaping and delivering better outcomes locally;
- greater transparency in the management and disposal of the Common Good;
- improved powers for local authorities to recover the costs of dealing with dangerous and defective buildings;
- measures to streamline and extend the rural community right to buy;
- new duties to strengthen Community Planning, so that public sector agencies work as one to deliver better outcomes for communities;
- updated and simplified legislation on allotments; and
- new powers for local authorities to create local business rate relief schemes.

3.5 **Assets - Buildings and Land**

(1) The draft legislation has a strong focus on asset transfer which is presented as ways to ‘make it easier for communities to take ownership or make more effective use of land and buildings’. It contains detailed legislative proposals on ‘Asset Transfer Requests’ which are designed to give community bodies a more proactive role in identifying public sector land and buildings that they would be interested in owning or using. Section 3 of the draft Bill sets out provisions designed to give community bodies a more proactive role in identifying public sector land and buildings that they would be interested in owning and using for best public benefit. The provisions set out definitions of what constitutes a community body, which public bodies are covered by the legislation and terms surrounding timescales and the right to appeal a decision. As the legislative proposals for this section of the Bill are at an advanced stage, the consultation questions in this section are confined to process and definition.

(2) Generally this part of the legislation has been well received but it has also been described as weak in equalities terms as it does not extend any provisions to offer any level of support to engage in the process of asset transfer which may affect the chances of communities who are unable to comply with processes or unable to raise funding.

3.6 **Right to Participate - Community Engagement**

(1) Community engagement and ‘requests to participate in processes to improve outcomes of service delivery’ form a significant part of the Bill. The proposals are designed to support participatory democratic processes in the recognition that ‘evidence shows that involving people more regularly and more effectively in the decisions that affect them leads to better outcomes and a greater sense of control for communities’.

(2) In South Ayrshire, we have some good examples of this already happening. In Wallacetoun and Newton and in Lochside two local neighbourhood groups are working with local residents and Council staff on service delivery.

(3) The right to participate places responsibilities onto community groups as well as public sector bodies. It does however raise the same concerns as with ‘assets’ in terms of what capacity do communities have that would allow them to take part effectively. In many cases community capacity needs to be supported and built by local people.
3.7 **Strengthening Community Planning**

The consultation element on strengthening community planning is not yet supported by detailed legislative proposals. Instead it constitutes a background and description of community planning arrangements, setting out a case for change which builds on the recommendations of the report of Christie Commission. The Bill provides a legislative framework for more effective community planning by placing an increased emphasis on outcomes. The key proposal is to place new duties on Community Planning Partnerships and partner bodies to allow greater external scrutiny. It is unclear what is meant by ‘Duties’ and ‘Principles’ and this is reflected in the draft consultation response.

3.8 **Common Good**

There are proposed new statutory duties on local authorities to establish and maintain a register of all property held by them for the Common Good. This already exists in South Ayrshire. The draft Bill introduces a requirement to consult with community councils and other community bodies when establishing that register, and about the disposal and use of common good assets.

3.9 **Allotments**

The consultation also contains proposals for more simplified arrangements to allow more people to access allotments. Specifically this would mean keeping waiting lists for allotments and demonstrating that they are making efforts to keep up with demand.

3.10 **New Powers for Local Authorities to Create Local Business Rate Relief Schemes**

The consultation discusses the support of business growth which is topical in South Ayrshire following the development of the Ambitions Programme. It proposes to allow local authorities to create and fund their own localised business rate relief schemes. This power had received strong support in a previous consultation around ‘Supporting Business, Promoting Growth’.

3.11 **Water and Sewerage Charges to Third Sector Organisations**

Lastly the Scottish Government highlights its intention to consult separately on a scheme to exempt small and medium sized Third Sector organisations from water and sewerage charges.

4. **Proposals**

4.1 The draft consultation response is attached at Annex 1. The consultation has 75 wide ranging questions. The draft Council response is attached for consideration.

4.2 Responses are based on the following consultation:

- responses from Council staff from relevant services;
- feedback from elected members at a briefing held on 18 December 2013; and
- discussion at the Community Planning Board

5. **Resource Implications**

5.1 **Financial**

There are no financial implications immediately arising from this report. However, a number of the proposals will have financial implications for the Council such as increasing allotments. We expect to see Guidance associated with the proposals in May which will provide further information that would allow costs to be more readily calculated and we will also get further information when the Financial Memorandum is published.
5.2 **Legal**
There are no legal implications immediately arising from this report.

5.3 **Human Resources**
There are no human resource implications immediately arising from this report.

6. **Risk**
6.1 There are no risks associated with accepting the recommendations of this report.

7. **Equalities**
7.1 An Equalities Impact Assessment has not been carried out on this report and we would expect the Scottish Government to consider their recommendations in relation to equalities.

8. **Sustainable Development Implications**
8.1 This report does not propose or seek approval for a plan, policy, programme or strategy or document otherwise described which could be considered to constitute a plan, programme, policy or strategy.

9. **Options Appraisal**
9.1 An options appraisal has/ has not been carried out in relation to the subject matter of this report.

10. **Link to Council's Priorities/ Improvement Programme**
10.1 The Council has a strong commitment to improving working with communities and the Government’s proposals on community empowerment provide further impetus in that direction.

11. **Results of Consultation**
(1) There has been no public on the contents of this report.
(2) Consultation has taken place with Councillor Bill McIntosh as Portfolio Holder for Corporate, Strategic and Community Planning.
(3) Consultation has taken place with all elected members via a members seminar.
(4) The consultation has been sent to community councils and VASA have organised a series of consultation events for third sector organisations and community councils.

**Background Papers**
Consultation document and draft Bill:

On-line consultation link:
https://consult.scotland.gov.uk/community-empowerment-unit/cerb/consult_view

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**Date:** 13 January 2014
Consultation on the Community Empowerment (Scotland) Bill

Response Questionnaire

Chapter 3 - Proposals with draft legislation

Please read the draft Bill provisions before you answer these questions. You do not need to answer all the questions in this questionnaire, only answer the questions that you have an interest in. Separate questionnaires are provided for each chapter of the consultation paper.

Please make sure you also return the Respondent Information Form with your response, so that we know how to handle it.

3.1 Community Right to Request Rights in Relation to Property

Please read Part 1 of the draft Bill (Annex C pages 1 to 9) before you answer these questions:

Q1 Do you agree with the definition of community body at section 1?  
   Yes ☐  No ☒

Do you have any changes to suggest?

We believe there needs to be clearer definition of ‘community body’. There is concern regarding the possibility of unincorporated community bodies. We consider that it should include all incorporated forms of entity – not just “companies” e.g. SCIO model should be available also.

Q2 Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?  
   Yes ☐  No ☒

What other bodies should be added, or removed?

Could include ALEO’s (arms length external organisations) but only certain ALEOs might be appropriate for this?

Q3 What do you think would be reasonable timescales for dealing with requests, making an offer and concluding a contract, in relation to sections 5(6), 6(2)(c) and 6(6)?

5(6) at least 3 months  
6(2)(c) at least 6 months  
6(6) at least 6 months
Q4 Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?  
Yes ☐ No ☐
Are there other appeal or review procedures that you feel would be more appropriate?

We consider that this is a question for community bodies to respond to.

Q5 What form of appeal or review processes, internal or external, would be appropriate in relation to decisions made by local authorities and by Scottish Ministers?

Whatever emerges should be as light as possible and avoid a costly, cumbersome process. We need to be clear whether it is an appeal or a review.

Q6 Do you have any other comments about the wording of the draft provisions?

Clarity is require on whether decisions should be delegated so initial appeal/review can be internal to local authorities.

Further Regulations are anticipated.

Q7 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.

Potential for property savings and possibly service savings but costs likely to be incurred relating to community capacity building and the production of property information and negotiations. Also the potential for properties to 'revert' back if transfers are unsuccessful due to community capacity issues We would want to ensure there was not a requirement to take back any.

There is a risk that community groups apply for unviable assets, as a way of protecting services at a very local level. This will potentially hinder ability of local authorities to take a strategic view on rationalising assets, which would result in fewer facilities but with better longer term sustainability. This suggests that “sustainability” should be one of the pre-requisites for a transfer?

There is also a risk that some assets will require investment prior to transfer, with finance targeted in the wrong place. It needs to be clear that an asset transfer does not obligate an authority to spend money on the asset prior to transfer. This would be very problematic in terms of the current financial climate.
The cost of supporting community groups to be in a position to take on assets needs to be recognised; if this is to succeed there should be more emphasis on community capacity building and consideration of how this is to be properly resourced. There is a risk that legislative burden without proper resourcing raises expectations that can't be delivered.

It is also likely that social enterprises are perhaps the most viable groups to want to pursue such asset transfers. The draft Bill makes no mention of these despite there being support and funding available in some Councils and externally to grow this sector.

There is a need to review the interaction between the development of these proposals and local democracy particularly the delivery of the capital programme.
3.2 Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery

Please read Part 2 of the draft Bill (Annex C pages 9 to 14) before you answer these questions:

Q8 Do you agree with the definition of community body at section 11?  
Yes ☐ No ☒  
Do you have any changes to suggest?

The definition could be more specific A review of local authority experience in setting up registers of tenants associations may provide information that will assist in dealing with this issue.

From an equalities point of view others may say that there should be no need for a formal constitution in terms of ‘right to participate’—this discriminates against those with learning difficulties, literacy issues and those with lower educational attainments who can and do contribute to effective community action and progress. Formality does not always equate to meaningful and effective community participation. This could be particularly relevant around the co-creation of services in terms of health and social care integration.

May be good to have a level of discretion for local authorities as to who we allow to participate.

Q9 Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)?  
Yes ☒ No ☐  
What other bodies should be added, or removed?
Q10 Do you agree with the description at section 13 of what a participation request by a community body to a public service authority should cover? Yes ☐ No ☒

Is there anything you would add or remove?

In general, there needs to be checks and balances to ensure right to participate requests add value to public sector delivery rather than becoming an additional administrative burden for local authorities.

Even the most experienced professionals struggle with the language of outcomes and improvement processes. A detailed code of guidance will be required for all concerned for the legislation to be effective.

The requirement to submit requests in writing may discriminate against disabled people and those who cannot write. Supportive alternative arrangements should be available and acceptable to ensure participation in the process by those who cannot write.

Q11 Do you agree with the criteria at section 15 that a public service authority should use when deciding whether to agree or refuse a participation request? Yes ☒ No ☐

Are there any other criteria that should be considered?

It is difficult to see what request could be excluded from such a wide definition. There needs to be provision to refuse requests if there is a negative impact on other services. By this we mean undermining existing good partnership working perhaps over a single issue leading to division if not handled in an appropriate manner.

Most partnerships would have terms of reference to follow but might this duty if used negatively run the risk of slowing down progress in some areas? Concern that an unrepresentative but vocal group is able to unduly influence? There is nothing in the draft Bill specifically on this. Requires us to do any more than “consider” representations made. This also raises Equalities and Human Rights issues.

Q12 Do you have any other comments about the wording of the draft provisions?

Detailed guidance will be required for all.

Q13 What costs and savings do you think would come about as a result of these draft provisions? Please be as specific as you can.
3.3 Increasing Transparency about Common Good

Please read Part 3 of the draft Bill (Annex C pages 14 to 16) before you answer this question:

Q14 Do you think the draft provisions will meet our goal to increase transparency about the existence, use and disposal of common good assets and to increase community involvement in decisions taken about their identification, use and disposal?

Yes ☒ No ☐

What other measures would help to achieve that?

Need to make sure community consultation takes place.

Register needs to show what asset is used for

We are of the view that the draft provisions will increase transparency re: Common Good assets and will increase community involvement and do not have further suggestions in this regard.

We have some concern that the provisions relate to “change of use” as well as disposal. Not clear how we define “change of use” which is not necessarily the same as Planning use for example.

The obligation to “have regard to” representations made is stronger than “consider” (re: participation duties). Implication might be if representations don’t want us to dispose we should not do so. At present there is existing legislation dealing with disposal of Common Good property – not clear how these new provisions relate to existing and requirement to go to Sheriff for approval to dispose in some cases – is Sheriff required to “have regard to” representations made? Further clarity on this issue is required.

3.4 Defective and Dangerous Buildings – Recovery of Expenses

Please read Part 4 of the draft Bill (Annex C pages 17 to 19) before you answer these questions:

Q15 Do you agree that the cost recovery powers in relation to dangerous and defective buildings should be improved as set out in the draft Bill?

We agree the introduction of these powers would be useful in some situations but the most important outcome for Councils is the pay back of expenditure and a Notice will not readily deliver payments. It would be a more meaningful improvement to see direct powers to recover costs by Charging Orders (CO) or more effectively by Compulsory Purchase Orders (CPO’s). The only CPO powers in the Building (Scotland) Act 2003 are contained in section 45 and are very restrictive. The powers can only be used for dangerous buildings and only where the owner is unknown. Problems with buildings becoming unsafe is becoming a more frequent occurrence and often the owner is known but is unable or unwilling to pay for works to make a building safe for a variety of reasons including no
working capital, no access to finance and negative equity. South Ayrshire Council is currently directly involved with a vacant, derelict site in a town centre where the owner is abroad and has stated he has no funds to make the unsafe buildings on the site safe by demolition to comply with a Dangerous Building Notice. The site is heavily contaminated with asbestos and the contract is expected to be in excess of £250,000. In these circumstances the proposals in this Bill are unlikely to alleviate the problems for the Council in dealing with this and the potential unavoidable costs. However, a CO would provide an opportunity to provide finance over a long term with small repayments and a CPO would create an opportunity for the Council to redevelop a problem site.

Q16 Do you agree that the same improvements should apply to sections 25, 26 and 27 of the Building (Scotland) Act 2003?

Yes, agree with the inclusion of, and any action by the Council would be discretionary, however, the comments in answer to Q15 apply to enable Councils to maximise recovery of expenditure.
Chapter 4 - Detailed Policy Proposals

4.1 Improve and extend Community Right to Buy

Q17 The Scottish Government proposes to extend right to buy to communities in all parts of Scotland, where the Scottish Government is satisfied that it is in the public interest. Do you agree with this proposal? Yes ☒ No ☐

Are there any additional measures that would help our proposals for a streamlined community right to buy to apply across Scotland?

Ensure that community capacity is developed and properly resourced so that this progresses effectively and evenly across communities.

The definition of a community needs clarifying.

Creating a package of information that groups need to inform decisions would be helpful to allow groups to fully understand the process they are embarking on.

Clarity on how this relates to with the asset transfer provisions of the Bill would be helpful.

Q18 Do you think that Ministers should have the power to extend “registrable” land to cover land that is currently not included as “registrable land”? Yes ☐ No ☒

What other land should also be considered as being “registrable”?

Q19 Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? Yes ☐ No ☒

What should these circumstances be?

Q20 How do you think this should work in practice? How do you think that the terms “neglected” and “abandoned” should be defined?

Neglected land would be likely to be land which has not been maintained for a significant period of time and despite requests to the owner (an identified and contactable owner) no works have been carried out. This should be for the Council to investigate..
Abandoned land would be defined as land where no owner can be traced after all avenues have been exhausted. Need to be clear on who is investigating.

Q21  Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate?  

Yes ☐ No ☑

Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

1(a) Needs more definition i.e. What is a substantial and significant connection 
(b) How near? 
(c) Is 10% enough? 
We have no direct experience of Right To Buy therefore cannot comment on this section fully.

Q22  Do you think that the information that is included in the Register of Community Interests in Land is appropriate?  

Yes ☑ No ☐

If not, what should that information include?

Q23  How could the application form to register a community interest in land be altered to make it easier to complete (eg, should there be a word limit on the answers to particular questions)?

Should the questions be more specifically directed to the requirements of sections 36(2) and 38(1) of the Act?  

Yes ☐ No ☑

Do you have any other suggestions?
Q24  Do you agree that communities should be able to apply to register an interest in land in cases where land unexpectedly comes on the market and they have not considered using the community right to buy?

Yes ☐ No ☒

If so, what changes should be made to section 39 to ensure that such communities can apply to register a community interest in land?

It would have a detrimental and unfair impact on an owner if, when property was marketed, an interest registration could be triggered. This could result in a huge delay in a sale being agreed and that sale may never actually happen.

Q25  Do you agree that the process to re-register a community interest should be a re-confirmation of a community interest in land?

Yes ☐ No ☒
Q26  Do you think that the community body should be asked to show that its application is (1) still relevant, (2) has the support of its “community”, and that (3) granting it is in the public interest?  

Yes ☒ No ☐

Q27  What do you think should be the length of the statutory period for completing the right to buy, taking into account both the interests of the landowner and the community body?  Please explain the reasons for your proposal.

The process could take at least 1 year as there are significant stages to go through and all parties need to be comfortable that the transfer will be sustainable.

Q28  Do you think that some of the tasks within the right to buy (such as valuation, ballot etc) should be rearranged and the timescales for their completion changed in order to make the best use of the time available within the right to buy?  Please set out what changes you think should be made and why.

Valuation and ballot could be undertaken at the same time.

Q29  Do you agree that Scottish Ministers should organise the undertaking of a community body’s ballot and pay its costs.?  

Yes ☐ No ☒

If you disagree, please provide your reasons.

Agreed that Scottish Ministers should undertake the ballot but the costs should be passed on to the community body.

Q30  Should Scottish Ministers notify the ballot result to the landowner?  

Yes ☒ No ☐

Please explain your reasons.

Landowner is an interested party, if ballot is marginal the interest may arise again.
Q31 Do you think Ministers should develop a pro-forma for community bodies to set out their plans for the sustainable development of land and community? 

Yes ☒ No ☐

Please give reasons for your view.

Standardisation of process
Ease of comparison

Q32 Do you agree that community bodies should be able to define their “community” in a more flexible way by the use of either postcodes, settlement areas, localities of settlements, and electoral wards, or a mixture of these, as appropriate?

Yes, in an urban area postcode isn’t an appropriate definition.

Q33 Are there any other ways that a “community” could be defined?

Different interest groups

Q34 Do you agree that other legal entities in addition to the company limited by guarantee should be able to apply to use the community right to buy provisions? 

Yes ☒ No ☐

Q35 Do you agree that SCIOs should be able to apply under the provisions? 

Yes ☒ No ☐

Q36 What other legal entities should be able to apply under the community right to buy provisions – and why?

Community Groups aren’t always limited companies but are properly constituted and representative. It will be important to consider whether “unincorporated entities” should be included – as this leads to personal liability for members of the group. Unincorporated entities may be “properly constituted” but they cannot own property, nor enter contracts etc. so this is a complex area.

Q37 Do you agree that Ministers should only have to “approve” the changes to Articles of
Association for community bodies that are actively seeking to use or are using the community right to buy?  

Yes ☒ No ☐ why?

Q38 Do you think that the length of a registered interest in land should remain as five years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

5 years is acceptable. Property market changes happen in cycles and therefore registration of interest should be reviewed anew, 5 years is a medium term option.

Q39 Do you agree that the valuation procedure should include counter representations by the landowner and community body?  

Yes ☒ No ☐

If you disagree, please give your reasons for your decision.

Despite the appointment of an independent valuer both parties should have a right to defend their position. The landowner can be disadvantaged.
Q40  Do you think that there should be a provision to deter landowners from taking the land off the market after they have triggered the right to buy?  
Yes ☒ No ☐

Please explain your reasons.

Yes but it should be worded such that a landowner would have the right to withdraw if there is a documented reason for doing so, e.g. to sell at the price requested would create significant financial hardship.

Q41  Do you think that there should be greater flexibility in a community body’s level of support for a right to buy in the ballot result than is currently permitted?  
Yes ☐ No ☒

Q42  Do you think that the ballot result should focus on a sufficient amount of support to justify the community support to proceed with the right to buy the land?  
Yes ☒ No ☐

If yes, please explain how secured community support should be measured

% is acceptable but careful consideration required on what that % should be.

Q43  Do you agree that community bodies should be able to submit evidence to Ministers in support of their ballot result where they believe that their ballot has been affected by circumstances outwith their control?  
Yes ☒ No ☐

Q44  Do you think that Scottish Ministers should be able to ask community bodies for additional information relating to their right to buy “application” which Ministers would then take into account in considering their right to buy “application”?  
Yes ☒ No ☐
Please explain your reasons.

If a ballot result is marginal and if there is a valid reason for the result it may be considered as material. Ministers should have a right to request information if they have concerns regarding the outcome of a ballot particularly if its marginally in support.

Q45 Do you think that Ministers should be able to accept an application to register a community interest in land which is subject to an option agreement (on part or all of the land)?

Yes ☑ No ☐

Q46 If there is an option agreement in place, do you think that the landowner should be able to transfer the land as an exempt transfer while there is a registered interest over that land?

Yes ☑ No ☐

Please explain your answer.

If an option agreement exists there may already have been an exchange of funds and a legal contract in place. A landowner should not be placed at a disadvantage or in a position where they have to breach a contract.

Q47 Do you think that the prohibition on the landowner from taking steps to market or transfer the land to another party should apply from the day after the day on which Ministers issue the prohibition letter rather than the day when the owner/heritable creditor receives the notice?

Yes ☑ No ☐

Please explain your answer.

Should not penalise the landlord by assuming they have received a notice which is being delivered by a 3rd party.

Q48 Do you agree that public holidays should be excluded from the statutory timescales to register a community interest in land and the right to buy?

Yes ☑ No ☐

Q49 Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers?

Yes ☑ No ☐

If you disagree, please provide reasons for your decision.
Q50 Do you agree that community bodies and landowners should notify Scottish Ministers of any changes to their contact details (including any registered office)?

Yes ☒ No ☐

Q51 Do you think that Ministers should monitor the impact of the community right to buy?

Yes ☒ No ☐

How do you think that monitoring should be undertaken and what information should Ministers seek?

Consultation after sales are complete possibly by the CPP

Should the monitoring process be a statutory requirement, including provisions for reporting?

Yes ☒ No ☐

4.2 Strengthening Community Planning

Q52 What are your views on our proposals for requiring a CPP to be established in each local authority area, and for amending the core statutory underpinning for community planning to place stronger emphasis on delivering better outcomes?

South Ayrshire already has an established Community Planning Partnership and would agree that this should remain. There is overall agreement that community planning is the right way to operate and South Ayrshire would welcome the proposals to strengthen the community planning function.

Agree that as a Partnership we would want to strengthen our joint working in order to deliver improved outcomes for the area - if a statutory duty is placed on partners this puts all partners on an equal footing.

There may be some conflict between a partnership duty and an organisational duty. Partners would however be likely to be fully committed to the development and delivery of the SOA if their involvement is underpinned by a statutory duty.
Q53 What are your views on the core duties for CPPs set out above, and in particular the proposal that CPPs must develop and ensure delivery of a shared plan for outcomes (i.e., something similar to a Single Outcome Agreement) in the CPP area?

South Ayrshire would agree to the development of a shared plan / SOA with the onus on the Community Planning Board to oversee the proper consultation, development, delivery and reporting of the plan as outlined in the proposed core duties for CPPs.

Paragraph 4.3.4 states ‘it is proposed that the majority of these duties could be delivered by making it a statutory duty for CPP’s to develop and deliver a shared plan for outcomes in the CPP area’

However a statutory duty cannot be placed on a CPP as it is not a legal entity in its own right.

Q54 Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors?

Yes □ No □

What other changes may be required to make this more effective?

There is agreement that every partner requires to ‘join up’ more effectively in relation to engaging with our communities to ensure that community aspirations are reflected in the shared plans and outcomes.

It would be helpful if this dimension was extended to include co-ordination of community capacity building so that the maximum impact is made in this area. You will note from our comments under equality impacts that we are concerned that if community capacity building is not properly developed and resourced then the extent of community empowerment will be constrained and uneven. Capacity building is therefore central to community empowerment and it is not helpful if this effort is fragmented across partners.

Q55 How can we ensure that all relevant partners play a full role in community planning and the delivery of improved outcomes in each CPP area? Do the proposed core duties achieve that?

Yes □ No □

What else might be required?

There is agreement that a statutory duty on each partner to support the CPP in fulfilling its core duties would be welcome as partners would be more likely to participate fully in CPP processes. The introduction of core duties would also clarify accountability and delivery.

- It is not clear where responsibility for the proposed core duty for scrutiny and challenge of all partner contributions to the delivery of shared priorities would
sit. Could be vague and diffuse if this is a collective responsibility. There are sensitivities in relation to the chief officer of one organisation directly challenging another in a public meeting. We believe further consideration requires to be given to this area.

- There will also be a need for the community planning process to be facilitated so is the expectation that each CPP will determine the lead partner for that purpose?

- There may still be some conflict between the priorities of national / regional organisations and local outcomes – eg NHS HEAT targets versus local priorities and outcomes. Also may be some conflict with other statutory duties and competing SG priorities.

- Resources – can share but with possible similar constraints as above ie competing priorities. Not just in relation to monies but also staff, buildings and other assets. There are some complexities about how governance and accountabilities work in relation to shared resources across organisations.

- Need to develop a joined up way to engage communities and rive capacity building.

- Partners agree overall that community planning is the right way to operate.

Q56 What are the respective roles of local elected politicians, non-executive board members and officers in community planning and should this be clarified through the legislation?

It would be helpful to have roles more clearly defined around potential membership of CP boards.

Elected members already have a scrutiny role in South Ayrshire in relation to the Single Outcome Agreement Annual Reporting process. Community representatives on the CP Board are able to challenge partners in relation to services)

Q57 Should the duty on individual bodies apply to a defined list of public bodies – if so, which ones? Or should we seek to take a more expansive approach which covers the public sector more generally?

Membership is best determined locally to reflect local circumstances. Many Community Planning Partnerships have extended membership of their CP Boards to include non statutory partners in order to ensure a more expansive approach reflecting the needs of the area. Third sector and private sector partners are often now included in the membership and there is potential that a defined list would not align to the requirements of community planning locally.

It would seem pointless to put the duty on certain public sector partners and not others. If a public sector body is deemed appropriate to be involved in a community planning partnership then the same duty should apply to that partner as well as to other public sector partners even if as an organisation they do not sit on all 32 CPPs.

Q58 Local authorities are currently responsible for initiating, facilitating and maintaining community planning. How might the legislation best capture the community leadership role of Councils without the CPP being perceived as an extension of the local authority?
Local authorities will continue to have a community leadership role outwith community planning. Putting defined duties on other partners and clarifying their roles and responsibilities in relation to community planning will help present a collective voice to communities by it does not negate the individual responsibility which each partner has in relation to community delivery.

Q59 How can the external scrutiny regime and the roles of organisations such as the Accounts Commission and Auditor General support the proposed changes? Does this require changes to their powers or functions?

We think collective capacity building across the sector should precede any scrutiny regime. Scrutiny in relation to community planning should be supportive and be focused on helping to build on positive experiences across the country.

Q60 What other legislative changes are needed to strengthen community planning?

Nothing obvious.

4.3 Allotments

Q61 Do you agree with the proposed definition of an allotment site and allotment plot? Yes ☐ No ☒

How else would you suggest they be defined?

**Allotment Site:**
Term ‘allotment plots’ should just read ‘plots’.
Suggested definition would therefore read:
‘An area of land that is subdivided into plots and which may or may not include communal areas and buildings used for non-commercial production of fruit and vegetables for the individual plot-holders’ personal use.’

**Allotment Plot:**
There should not be a minimum size of an allotment plot because people’s individual requirements vary so much. Some would not cope with a plot of 60m2.
We are proposing to have individual timber framed raised beds for disabled, elderly and young children and they only measure 1.25 x 1.25m so fall way short of the stipulated minimum size of 60m2.

Q62 In order to include all existing allotments in the new legislation they must fit within the size range. What is the minimum and maximum size of one allotment plot in your area/site?

There are 3 well established allotment sites in South Ayrshire. The plot sizes are as follows:
full plot is 10 x 15m
half plot is 10 x 7.5m and the
quarter plot is 5 x 7.5m

Currently we are proposing to establish 3 new allotment sites with allotments ranging from 18-45m². We are also proposing to have individual timber framed raised beds for disabled, elderly and young children and they will measure 1.25 x 1.25m.

Q63 Do you agree with the proposed duty to provide allotments? Yes ☐ No ☒

Are there any changes you would make?

While we are very supportive of allotments and have taken steps recently to increase provision, in the current financial climate this does not feel a priority for legislation.

If proceeding, some clarification is required on the definition of an area. Does it refer to a local authority area or is it village or town within a local authority.

Do you agree with the level of the trigger point, ie that a local authority must make provision for allotments once the waiting list reaches 15 people?

Yes ☒ No ☐

Q64 Do you prefer the target Option A, B or C and why? Are there any other target options you wish to be considered here? Do you agree with the level of the targets?

Target option B is preferable. The level of demand is more important than the time someone is prepared to wait for a plot. We agree with a level of the target (50%).

Q65 Do you agree with the proposed list of local authority duties and powers?

Yes ☐ No ☒

Would you make any changes to the list?

This requires a level of resourcing which is not currently available. If duties and powers are going to flow in his areas then this needs to be matched with resources.
Q66 Do you think the areas regarding termination of allotment tenancies listed should be set out in legislation or determined by the local authority at a local level?

Legislation [ ]
Determined by local authority [x]

Q67 Are there any other areas you feel should apply to private allotments?

No

Q68 Do you agree that surplus produce may be sold?

Yes [x] No [ ]
If you disagree, what are your reasons?

As long as it is sold for non-commercial non-profit making reasons.

Q69 Do you agree with the proposed list of subjects to be governed by Regulations?

Yes [x] No [ ]
Would you make any changes to the lists?

Under No 4 could be added, storage of hazardous and dangerous materials such as petrol and herbicides. A restriction on a use of glass for cloches and cold frames with clear plastic or Perspex being permitted instead.

Chapter 5 – Wider Policy Proposals

5.1 Scotland Performs – embedding the outcomes approach in legislation.

Q70 We invite your views on the proposal to include in the Bill a provision that places a duty on Ministers to develop, consult on and publish a set of outcomes that describe their long term, strategic objectives for Scotland, and include a complementary duty to report regularly and publicly progress towards these outcomes.
We would support a duty on Ministers to both establish outcomes and then to report on them.

5.2 Subsidiarity and local decision-making

Q71 Given the actions that the Government and others already take to enable and support local democracy, together with the additional measures proposed in this consultation, are there any other actions we could take to reflect local democracy principles that would benefit communities?

We welcome the comment in the consultation paper: We also recognise that councils are the level of government closest to the citizen, giving people an opportunity to participate in decision-making affecting their everyday environment.

This is may be achieved by freeing local government from unnecessary legislative requirements, rather than creating new ones.
Chapter 6: Assessing Impact

Equality

Q72 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” under the Equality Act 2010.

The Bill potentially impacts on all protected characteristics, human rights and areas of deprivation/poverty. It would have been helpful if an Equality Impact Assessment had been developed with the drafting of the bill and offered for comment with the consultation.

It is not for the consultation process to provide the EIA – this does not ensure full consideration of each of the protected characteristics or cross-cutting issues as required by the Equality Act 2010.

Progress on community empowerment is inextricably linked to the capacity of communities and thus if this is an area which is not invested in then there is a risk of inequalities emerging so that less able communities get left behind.

Q73 What differences might there be in the impact of the Bill on communities with different levels of advantage or deprivation? How can we make sure that all communities can access the benefits of these proposals?

A developed programme and proper resourcing of capacity building.
Business and Regulation

Q74 Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

SAC fed in a supportive view on this power (especially for retail start-ups) in the rates consultation undertaken by the Scottish Government in early 2013

Environmental

Q75 Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on the environment.

ASSET TRANSFER
This could result in either a positive or negative impact upon the environment depending on the Community Body and its ability to manage, maintain and continue to raise sufficient funds to administer the Asset both in the short and long term.

A Relevant Authority for one reason or another may not be maintaining or maximising an Asset and a Community Body, as per 5(3)(c) of the draft Bill, could be in a position to improve the Asset. A Community Body may be able to access external funding; have specialist knowledge; be able to develop an economic benefit from the asset; have a good volunteer base to pull upon. In so doing, the Asset whether landscape or built has the potential to be positively managed and sustained therefore ensuring its retention for both the community and visitors alike.

As such, in theory such a transfer has the potential, depending upon the asset and the manner in which it is developed and managed, to have a positive impact upon the following environmental issues:
- Climate Change
- Energy
- Waste & Pollution
- Air, Soil & water
- Human Health
- Biodiversity, Flora & Fauna
- Landscape
- Cultural Heritage and Local Distinctiveness

Conversely where an Asset has been Transferred to a Community Body and it is unable to ensure the Assets maintenance and management or may not have the knowledge base to ensure the Assets positive management, this may result in the Asset falling into disrepair. As such the above environmental issues may well be negatively impacted.

ALLOTMENTS
The potential to increase the number of Allotments with Scotland would have positive impact upon the environment. The level of this impact would rise in correlation to the increase in the land made over for Allotment use. It could have significant impact upon the following environmental issues:
- Biodiversity, Flora & Fauna
- Landscape & Green Networks
- Human Health
- Soil

While also having a positive impact upon:
- Climate Change
- Waste & Pollution
- Local Distinctiveness

COMMUNITY ENGAGEMENT - Participate in process to improve outcomes, community planning, common good

In relation to all the issues there is potential for positive environmental impact in that it allows people who are interested in environmental issues to participate and to raise their thoughts and views in a forum that has the ability to effect change.