

## **Community Empowerment Bill (Scotland) passed by Scottish Parliament**

After four years in the making the Community Empowerment (Scotland) Bill was passed by the Scottish Parliament on 17 June 2015.

The Bill provides a legal framework that will promote and encourage community empowerment and participation. It creates new rights for community bodies and places new duties on public authorities.

The next stage is for the Bill to receive Royal Assent, at which point it will become an Act, and then each section has to be brought into force by a "Commencement Order".

The Scottish Government will work with community bodies, public authorities and third sector organisations to develop the orders, regulations and guidance needed to implement the Bill. The guidance will help people better understand the detail of what the legislation says. Once everyone is ready for it, the legislation will come into effect. The different Parts will be developed separately and will come into effect at different times. Information on progress will be posted on the Scottish Government website. Listed below is a summary of the Bill's contents but the full text of the Bill "as passed" is on the Scottish Parliament's website.

### **Bill contents**

**National Outcomes:** Places a duty on Scottish Ministers to develop, consult on and publish a set of national outcomes for Scotland, which builds on the Government's internationally acclaimed "Scotland Performs" framework.

**Community Planning:** Places Community Planning Partnerships (CPPs) on a statutory footing and imposes duties on them around the planning and delivery of local outcomes, and the involvement of community bodies at all stages of community planning. Tackling inequalities will be a specific focus, and CPPs will have to produce "locality plans" at a more local level for areas experiencing particular disadvantage.

**Participation Requests:** Provides a mechanism for communities to have a more proactive role in having their voices heard in how services are planned and delivered.

**Community Right to Buy:** Amends the Land Reform (Scotland) Act 2003, extending the community right to buy to all of Scotland, urban and rural, and improving procedures. It also introduces a new provision for community bodies to purchase land which is abandoned, neglected or causing harm to the environmental wellbeing of the community, where the owner is not willing to sell that land. This is if the purchase is in the public interest and compatible with the achievement of sustainable development of the land.

**Asset Transfer Requests:** Provides community bodies with a right to request to purchase, lease, manage or use land and buildings belonging to local authorities,

Scottish public bodies or Scottish Ministers. There will be a presumption of agreement to requests, unless there are reasonable grounds for refusal. Reducing inequalities will be a factor for public authorities to consider when making a decision. Relevant authorities will be required to create and maintain a register of land which they will make available to the public.

**Delegation of Forestry Commission Functions:** Allows for different types of community bodies to be involved in forestry leasing.

**Supporter Involvement in Football Clubs:** The Scottish Government is committed to the principle that supporters should have a role in decision-making, or even ownership when the opportunity arises, of their football clubs. The Bill as passed provides powers for Ministers to make regulations to facilitate supporter involvement and give fans rights in these areas. The Scottish Government will shortly issue a consultation paper to explore the best way of taking this forward.

**Common Good:** Places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before disposing of or changing the use of common good assets.

**Allotments:** Updates and simplifies legislation on allotments. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and ploholders. Provisions are made to allow the size of an allotment to be agreed between the person requesting an allotment and the local authority and to require fair rents to be set.

**Participation in Public Decision-Making:** A new regulation-making power enabling Ministers to require Scottish public authorities to promote and facilitate the participation of members of the public in the decisions and activities of the authority, including in the allocation of its resources. Involving people and communities in making decisions helps build community capacity and also helps the public sector identify local needs and priorities and target budgets more effectively.

**Non-Domestic Rates:** Provides for a new power which will allow local authorities to create and fund their own localised business rate relief schemes to better reflect local needs and support communities.

### **How can I register interest in taking over a building owned by a local authority or public body?**

The legislation on asset transfer (Part 5 of the Act) is not in force yet. But many local authorities, and some public bodies, already have asset transfer schemes on a voluntary basis. The first step is to contact the owner and ask them about the property.

If the property is in a rural area or small town you may want to consider the community right to buy process (this will be extended to urban areas when Part 4 of the Act comes into force).

### **Which public bodies are covered?**

Where parts of the Act apply to a particular list of bodies, these are set out in the schedules at the end of the Act. In each of these cases, Scottish Ministers have powers to add new public sector organisations to the list, if needed.

Community planning partners are local authorities and the bodies listed in schedule 1. Section 13(2) lists organisations that have additional statutory duties to facilitate community planning and take reasonable steps to ensure the CPP fulfils its functions efficiently and effectively.

Participation requests can be made to the “public service authorities” listed in schedule 2.

Asset transfer requests can be made to the “relevant authorities” listed in schedule 3.

### **How is a “community” defined in the Act?**

In most parts of the Act, “community” is not defined. It is left to each group of people to describe what they have in common.

For national outcomes the Scottish Ministers are required to consult with people who represent the interests of communities in Scotland, when determining or carrying out a review of the national outcomes. Under section 1(11), “community” includes any community based on common interest, identity or geography”.

Parts 2 (community planning) and 8 (common good) refer to “communities (however described) resident or otherwise present in the area of the local authority”. Parts 3 (participation requests) and 5 (asset transfer requests) are open to bodies which relate to a particular community, but it is up to the body to define that community itself.

The exception is in Part 4 of the Act, which amends the Land Reform (Scotland) Act 2003. In Part 2 (community right to buy) and the new Part 3A (abandoned, neglected or detrimental land) of the 2003 Act, a community must be defined by

reference to postcode units or other types of area which may be prescribed by the Scottish Ministers. (Crofting communities are defined by township, or by other criteria with Ministers' approval.)

### **What type of community groups can use the rights in the Act?**

Different parts of the Act have different requirements for the community groups that can get involved, and different terms to describe them, to make clear which is which.

In Part 1 (national outcomes), Scottish Ministers have to consult "persons who appear to them to represent the interests of communities in Scotland". "Community" includes any community based on common interest, identity or geography, and any individual, group or organisation could be included.

Parts 2 (community planning), and 8 (common good) do not have any formal requirements for community bodies that want to be involved in the process, except that they are established to promote or improve the interests of communities "resident or otherwise present" in the area.

Section 20 sets out the types of body which can make a participation request. This includes community controlled bodies (defined in section 19), community councils, groups without a written constitution, and bodies designated for the purpose by Scottish Ministers.

Section 77 sets out the types of body which can make an asset transfer request, which are community controlled bodies (as defined in section 19) or bodies designated for the purpose by Scottish Ministers. If they want to make a request for ownership of the land, rather than lease or use, they must also be a company, a SCIO or a Community Benefit Society which meets the criteria in section 80.

Part 4 of the Act amends the requirements for community bodies wanting to exercise the community right to buy or crofting community right to buy under the Land Reform (Scotland) Act 2003, and sets out the requirements for the new right to acquire abandoned, neglected or detrimental land. These allow for companies limited by guarantee, SCIOs and community benefit societies to be included, where they meet the other criteria required.

Part 6 amends the requirements for community bodies who want to take up forestry leasing from the Forestry Commission Scotland. Instead of having to be a company limited by guarantee, they can be any type of body corporate with a written constitution which meets the other criteria set out in section 7C of the Forestry Act 1967, as amended.

## **How can I register interest in taking over a building owned by a local authority or public body?**

The legislation on asset transfer (Part 5 of the Act) is not in force yet. But many local authorities, and some public bodies, already have asset transfer schemes on a voluntary basis. The first step is to contact the owner and ask them about the property. You may also find it helpful to contact the Community Ownership Support Service for advice <http://www.dtascommunityownership.org.uk/>.

If the property is in a rural area or small town you may want to consider the community right to buy process (this will be extended to urban areas when Part 4 of the Act comes into force).

## **Does Asset Transfer under the Act have to be at market value?**

No. The Act does not say anything about how much a community body would be expected to pay for transfer of an asset. It only says the community transfer body must state in the asset transfer request the price it is prepared to pay. The relevant authority must agree to the request unless there are reasonable grounds for refusal, taking into consideration (amongst other things) the benefits that may arise from the community body's proposal and comparing that to the benefits of any other proposal.

Local authorities can dispose of land at less than market value, under the Disposal of Land by Local Authorities (Scotland) Regulations 2010. The regulations require them to consider whether the disposal is likely to promote or improve economic development or regeneration, health, social wellbeing or environmental wellbeing. These matters are also to be considered in deciding whether to agree to or refuse an asset transfer request.

Other relevant authorities are subject to the Scottish Public Finance Manual. This states that "Where there are wider public benefits, consistent with the principles of Best Value, to be gained from a transaction, disposing bodies should consider disposal of assets at less than Market Value. This includes supporting the acquisition of assets by community bodies, where appropriate."

We expect that the guidance to be developed on asset transfer will address the information that community transfer bodies may need in order to offer an appropriate price, and how relevant authorities can assess the value of benefits offered by community proposals.