

Response to Scottish Government Consultation on the proposed Community Empowerment and Renewal Bill

Community Woodlands Association

Introduction

The Community Woodlands Association welcomes the opportunity to respond to this consultation. We believe the proposed Community Empowerment and Renewal Bill represents an important opportunity to significantly advance the cause of sustainable, economically active and resilient rural communities.

We are particularly pleased by the recognition given to community asset ownership and enterprise as key drivers for community empowerment: ownership of land and control over land use, and the capacity to generate income streams which are independent of the state, are critical in determining the degree to which a community becomes empowered.

CWA was established in 2003 as the direct representative body of Scotland's community woodland groups. We help community woodland groups across the country achieve their aspirations and potential, providing advice, assistance and information, facilitating networking and training, and representing and promoting community woodlands to the wider world.

From the pioneering seed sown in 1987 by Wooplaw Community Woodland in the Borders, the first community buyout in Scotland, there are now well over 200 community woodland groups across Scotland, responsible for or working in partnership over the management of tens of thousands of hectares woodland and open space. New groups continue to be established, encouraged by the Land Reform legislation and the National Forest Land Scheme, seeking to develop and use local woodlands to deliver a range of economic, social and environmental benefits for their community. Some are successful in their attempts to acquire land; almost all believe that far too many bureaucratic obstacles are placed in their way.

The Community Woodlands Association believes that the provisions of Community Empowerment and Renewal Bill must be community focussed and straightforward to operate. Whilst it may be difficult to precisely define "Community Empowerment", we do know that it is not something that Scottish Government bodies or Local Authorities can do (and definitely not by employing "Community Empowerment Officers"); rather it is something that communities choose to do for themselves.

However, public bodies can and do facilitate (or hinder) community empowerment, through legislation, policy, allocation of resources and organisational culture. Our hope is that the CERB will facilitate empowerment through legislation, but its provisions must be rooted in wider policy, and be backed up with appropriate resources for delivery. Most critically, perhaps, legislation and policy must be implemented: in many cases this requires cultural change in statutory bodies charged with interacting with communities. CWA believes that

the most effective mechanism to achieve such change is to confer communities with new, legally enforceable rights rather than seek to impose new duties on public bodies.

Our response to this consultation is underpinned by our understanding of community empowerment, based on a number of key principles which we share with other Scottish community-led networks:

Self-determination. Self-definition is at the heart of empowerment: we believe local people should be allowed to determine for themselves how their community is defined, which local organisational structure/structures is/are best suited to take forward their programme of local empowerment, and which organisations are best placed to offer them support to do so.

Local people leading. Community empowerment best occurs when local people lead the process of taking power and resources to themselves. Any community empowerment strategy needs to encourage and support communities in this bottom-up activity.

Subsidiarity. We believe that subsidiarity is a crucial organising principle: a matter ought to be handled by the smallest, lowest, or least centralised authority capable of addressing that matter effectively. This principle should inform all aspects of public policy in Scotland.

We would also like to raise two further general points. The first relates to the relationship between the progress of the Community Empowerment and Renewal Bill, and the work of the recently established Land Reform Review Group, charged to report to Scottish Ministers by the end of 2013 on the development and enhancement of the Land Reform Act. There is clearly considerable common ground between the two pieces of work, and indeed the Community Right to buy is explicitly referenced in the CERB consultation paper.

We comment in more detail on this specific point later in this response: our broader comments are that as a matter of principle we see no reason why urban and rural communities should not have the same rights with respect to community asset acquisition, and that it will be essential for the Scottish Government to carefully manage the parallel processes to ensure that one part does not pre-empt and close off the other and that the end result does not contain anomalies.

Our final introductory point relates to the price that communities are expected to pay for assets (particularly when the acquisition is from the public sector), which very often is unrelated to their productive value. Often the assets being acquired are more accurately described as liabilities, which the communities are taking on to “rescue” them from neglect or prevent service closures. Where land is being acquired, the price (determined as full market value in a private sector sale) is inflated by inclusion of a number of components of value which are irrelevant to either public sector or community owners: the value of land as a signifier of status and social power, its use as a repository of capital and as collateral for borrowing, and the tax and subsidy benefits of ownership. In these cases the continued insistence on “full market value” is an impediment to sustainable development.

In our particular sector, the growth and development of community woodlands in Scotland has been severely constricted in recent years by difficulties over financing. In particular the

impact of the National Forest Land Scheme has been limited by the inability of groups to raise capital for purchase. Communities have been trapped between Forestry Commission Scotland's insistence that the Scottish Public Finance Manual demands sale at "full market value" and Funders' reluctance to support such acquisitions. Whilst the new Scottish Land Fund appears to offer a partial solution, we have been concerned to hear that State Aids regulations (or their interpretation by over-cautious public officials) may impinge on the effectiveness of the fund.

The position of State Aids with respect to community asset acquisition and enterprise must be clarified and if possible cleared. The simplest way forward would be for the Scottish Government to develop block exemptions for non-profit-distributing community-led organisations.

There are a number of other potential solutions to these issues of price and value: one such would be for the Community Empowerment and Renewal Bill include provision to amend the Scottish Public Finance Manual to permit Scottish Government bodies to dispose of assets at less than market value when the disposal is likely to contribute to economic development or regeneration; health; social well-being; or environmental well-being - in other words, to mirror the powers given to Scottish Local Authorities under the Disposal of Land by Local Authorities (Scotland) Regulations 2010.

We believe there is also a broader need to redefine the meaning of "public ownership", to encompass community ownership, recognising that community asset acquisition, development and management by non-profit distributing, community-led bodies is in the public interest and is a key component of building community resilience and achieving sustainable development.

PART I: STRENGTHENING COMMUNITY PARTICIPATION

The Community Woodlands Association supports moves to increase community participation in service design and delivery, but we would argue it is important not to conflate community consultation and participation with genuine and effective community empowerment or community-led regeneration: these activities have different purposes and objectives.

Q1. What would you consider to be effective community engagement in the Community Planning process? What would provide evidence of effective community engagement?

Q2. How effective and influential is the community engagement currently taking place within Community Planning?

Our experience, which appears to match that of the rest of the voluntary sector, is that there has been very little meaningful community engagement in Community Planning processes to date. One issue is the fundamental mismatch of scale: the Community Planning process is about the strategic planning and delivery of public services at a regional or city scale, whereas communities are more likely to engage and relate to activity at a local or neighbourhood scale.

Q3. Are there any changes that could be made to the current Community Planning process to help make community engagement easier and more effective?

Whilst the current process could be tweaked and improved, we are not convinced that it will ever be truly effective as a mechanism for encouraging significant community empowerment. Whilst there is clearly a need for regional authorities and other public sector bodies to strategically plan future public service delivery, any community representation at this geographic scale can only be tokenistic.

Genuine, widespread and effective community participation as envisaged by the Christie commission would require these decisions on service delivery to be made at a much smaller geographic scale, which implies significant devolution of powers and in essence, a programme of local government reform which, no doubt, exceeds the remit of the CERB.

In the short term however, the role, if any, of Community Planning Partnerships in strengthening community participation should be clarified, and removing the word “community” from their name, renaming them as (perhaps) “Regional Planning Partnerships

Q4. Do you feel the existing duties on the public sector to engage with communities are appropriate?

Q5. Should the various existing duties on the public sector to engage communities be replaced with an overarching duty?

CWA does not believe that a general “duty to engage with communities” is likely to be effective without significant change of organisational culture in public sector bodies: indeed

some sector-specific requirements might be lost by imposing a generalised and standard duty.

Instead we would argue that better engagement with communities would be more likely if public bodies were to genuinely encourage active citizenship rather than treat local people as consumers, and had to respond to communities taking advantage of new, legally enforceable rights.

Q6. What role, if any, can community councils play in helping to ensure communities are involved in the design and delivery of public services?

Q7. What role, if any, can community councils play in delivering public services?

Q8. What changes, if any, to existing community council legislation can be made to help enable community councils maximise their positive role in communities

The CWA is aware that there are mixed views about the effectiveness and representativeness of Community Councils, but they have a clear statutory position and democratic rules of governance, and we are very conscious that in many instances Community Councils have been instrumental in the early stages of the development of individual community woodland groups.

We believe that the weaknesses of community councils are a reflection of their lack of powers or discretion over spending: if the power and importance of community councils was increased then they would attract more local interest and engagement. In line with the principle of subsidiarity we believe there is scope for the devolution of a great deal of responsibility and spending discretion to a lower tier of government, although the discussion of whether community councils *as presently established* are the appropriate vehicle for this is beyond the scope of this response

Q9. How can the third sector work with Community Planning partners and communities to ensure the participation of communities in the Community Planning process?

As previously noted, we do not believe that having a single third sector representative in the Community Planning Partnership structure is an effective way to ensure community participation in the planning or delivery of public services; this would require significant reorganisation and devolution of powers.

Q10. Should there be a duty on the public sector to follow the National Standards for Community Engagement?

No. The CWA does not believe that this would be productive.

Q11. Should there be a duty on the public sector to publish and communicate a community engagement plan?

No.

Q12. Should community participation be made a more significant part of the audit of best value and Community Planning?

As we do not believe Community Planning (as currently practised) is likely to be an effective mechanism for strengthening community participation we do not see any value in increasing its role in the audit. There may however be broader questions around how community empowerment is reflected within the practices of Audit Scotland.

Q13. Should public sector authority have a named accountable officer, responsible for community participation and acting as a primary point of contact for communities?

Based on our experience of public sector bodies which do have such posts, we do not believe that this is a sensible idea, *unless* it is very clear that the accountable officer's primary remit is to work internally as a champion for the community agenda. The reality of such posts is that too often they appear to operate to manage community contact, releasing the remainder of the organisation from any obligation to deal directly with community interests.

Q14. Can the Scottish Government do more to promote the use of the existing tenant management rights in sections 55 and 56 of the Housing (Scotland) 2001 Act?

Q15. Should the current provisions be amended to make it easier for tenants and community groups to manage housing services in their area?

We do not have any comment on Q14 and Q15

Q16. Can current processes be improved to give community groups better access to public service delivery contracts?

Yes, but at present the direction of travel of public sector procurement processes appears to be in the opposite direction, towards consolidation and centralisation and against local delivery.

Q17. Should communities have the right to challenge service provision where they feel the service is not being run efficiently and that it does not meet their needs?

Yes, in principle, but the broader issues of public procurement need to be tackled to facilitate the viability of alternative local provision.

Q18. Should communities have a greater role in deciding how budgets are spent in their areas?

Q19. Should communities be able to request the right to manage certain areas of spending within their local area?

The CWA is aware of pilot projects in participatory budgeting, which have proved popular and would seem to merit further investigation.

As noted previously, we believe that extensive devolution of powers and responsibilities, including discretion over spending budgets, is both desirable and necessary to deliver more sustainable, economically active and resilient local communities.

Q20. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part I. Please also give us examples of any definitions that you feel have worked well in practice

PART 2: UNLOCKING ENTERPRISING COMMUNITY DEVELOPMENT

The Community Woodlands Association believes that community asset ownership and management is a fundamental component of community empowerment, and that measures to facilitate and support a significant and on-going expansion of community asset ownership should be at the heart of the Community Empowerment and Renewal Bill

Communities seek to acquire assets currently in both public and private sectors: different measures and mechanisms may be required to facilitate these acquisitions. For the private sector, we argue for a single community right to buy, without urban/rural distinctions, built along similar lines to the provisions contained in Part 2 of the Land Reform Act, but very much improved, enhanced and simplified.

We are aware, however, that the Land Reform Act does not provide any rights to communities where a property owner's actions or neglect blocks or undermines community-led regeneration efforts. Compulsory Purchase Orders (as discussed in part 3 of this consultation) provide one option for tackling this issue, other options might include extending the remit and powers of the Land Court, or establishing a Land and Assets Commission.

For assets currently held in the public sector, we believe that there is a working model already in place: Forestry Commission Scotland's National Forest Land Scheme, which, with some fine-tuning could be applied to all other, non-local authority, public sector bodies, and that the CERB should place a duty on all other public bodies to develop and implement such a scheme within clear time limits.

Q21. Would you support a community right to buy for urban communities?

Yes. The Community Woodlands Association sees no justification for this right to be exclusively enjoyed by rural communities (or, more precisely, by communities with less than 10,000 inhabitants).

a. Should an urban community right to buy work in the same way as the existing community right to buy (as set out in Part II of the Land Reform (Scotland) Act 2003)?

In the most general terms yes, however, it should be noted that the Land Reform (Scotland) Act 2003) does not confer a "right to buy", merely a right to register an interest, which only becomes a right to attempt to buy if and when the landowner decides to sell.

More critically, since its introduction, a number of issues have been noted with the provisions of part 2 of the Act. These include overly prescriptive requirements for the community body (company form, geographic area), unclear mapping requirements, prohibition of blanket registrations, overly complex re-registration procedures, anomalous voting rules and ballot procedures, etc. In addition, registrations under the legislation have proved vulnerable to legal challenge.

As noted previously, a Land Reform review group has been established, to examine these and other issues. We hope that the result will be a very much improved and simplified right to buy, which can be extended to all of Scotland's communities

b. How should an “urban community” be defined?

Following the principle of community self-determination, communities should be able to determine for themselves what their community boundary is. Whichever method they use, the outcome should be capable of being delineated clearly on a map.

c. How would an urban and rural community right to buy work alongside each other?

We do not believe that there should be a distinction between the two: all communities in Scotland should have the same right to buy

Q22. The public sector owns assets on behalf of the people of Scotland. Under what circumstances would you consider it appropriate to transfer unused or underused public sector assets to individual communities?

We do not think it productive to attempt to specify the exact circumstances under which public sector assets could be transferred to communities, rather, we believe that CERB should require all public bodies to develop and implement an asset transfer scheme along the lines of the National Forest Land Scheme (NFLS).

The National Forest Land Scheme gives community bodies the opportunity to proactively make the case for community acquisition (by purchase or lease) of FCS assets. The NFLS has a number of key criteria, relating to the community body, its plans for the asset to be transferred, and the effect on the remainder of the National Forest Estate.

Eligible community bodies must be open, inclusive, democratic, representative, non-profit-distributing and have an appropriate dissolution clause in their constitution. The community body's plans for the asset must consistent with the principles of sustainable development, not significantly impinge on FCS's management of the remainder of the estate, and critically, deliver additional public benefits vis-à-vis continuation of FCS ownership and management.

A further important element of the NFLS is that whilst the final decision is reserved to the FCS Director, evaluation of community application to acquire FCS assets is undertaken by an independent panel. This has a number of advantages: it has enabled the process to remain positive (as an assessment of what an application is attempting to achieve) rather than a negative sifting (approving applications on the basis that they don't fail any specific, rigid, criteria); it has helped the scheme evolve and develop through changing external circumstances; and it distances FCS staff charged with administering the scheme from the decision making process, which assists the management of both external and internal relationships, as FCS is not perceived to be sitting in judgement on decisions to which it is also an interested party.

a. What information should a community body be required to provide during the asset transfer process?

The amount of information to be provided should be proportionate to the scale and complexity of the proposal and the value of the asset in question.

b) What information should a public sector authority be required to provide during the asset transfer process?

As noted elsewhere, basic information on the asset should be contained in the publicly accessible Register of Assets, whilst public sector bodies should make public their asset transfer policies and procedures, including decision making processes, support available, timescales, details of the information expected at each stage from community bodies, and any appeal process.

With regard to the asset itself, public authorities should provide information on whether assets are potentially available for transfer, confirmation that they hold title, whether they are common good, information on any restrictive burdens or covenants, current condition, valuation, running costs (where this exists), and current maintenance schedules.

c) What, if any, conditions should be placed on a public sector authority when an asset is transferred from the public sector to a community?

d) What, if any, conditions should be placed on a community group when an asset is transferred from a public sector authority to a community?

The CWA believes that the CERB should establish the principle of minimal conditions on asset transfer, with any perceived risk being managed through effective scrutiny of the community organisation to which the asset is being transferred.

If asset transfer is to be genuinely about empowering communities, then there should also be no unduly restrictive burdens. Imposing an overarching claw back option can ultimately be limiting and compromise the organisations ability to develop.

Q23. Should communities have a power to request the public sector transfer certain unused or underused assets?

Yes.

Q24. Should communities have a right to buy an asset if they have managed or leased it for a certain period of time?

Yes.

Q25. Do the current rules surrounding common good assets act as a barrier to their effective use by either local authorities or communities?

Yes. We understand that a number of asset transfers which have taken place have involved common good assets. The requirement to seek permission from the Sheriff/Court is both time consuming and costly. This requirement should be removed where the land or other asset being transferred (whether on a long lease or full transfer) involves transfer to a democratically accountable community group, and where the development will bring at least as much public benefit to the common good area concerned

Q26. Should common good assets continue to be looked after by local authorities?

Yes, initially, but It should be possible for appropriate community bodies to acquire and/or manage common good assets, subject to the principles outlined in the response to Q22 and any additional conditions derived from the original gift.

a). What should a local authority's duties towards common good assets be and should these assets continue to be accounted for separately from the rest of the local authority's estate?

To manage the assets for the purposes and communities for which they were gifted.
Yes, they should be accounted for separately from the rest of the LA's estate.

b). Should communities have a right to decide, or be consulted upon, how common good assets are used or how the income from common good assets is spent?

Yes. In many cases, as we understand it, many common good assets were gifted for the benefit of specific communities, so it seems appropriate that these communities should have an input to their use, or the use of income derived from them.

c). Who should be responsible for common good assets and how should they be managed?

See response to main question.

Q27. Should all public sector authorities be required to make their asset registers available to the public?

Yes, for reasons of accountability and transparency.

a. What information should the asset register contain?

The register should be a digitised map of the area with a range of tagged information including valuations (past and present), granted planning permission, ownership details, live registrations of CR2B with renewal dates, any planned investment programmes, maintenance schedules etc.

Q28. Should all public sector authorities be required to make their asset management plans available to the public?

Yes, again for reasons of transparency and accountability

Q29. Should each public sector authority have an officer to co-ordinate engagement and strategy on community asset transfer and management?

The Community Woodlands Association believes that all public bodies should have a duty placed on them to produce a community asset transfer strategy and procedures. Whether there is a single officer in a new post charged with this remit, or it is delivered through existing staff is less important than that there be a supportive culture and appropriate “buy-in” to the strategy throughout the organisation.

Q30. Would you recommend any other way of enabling a community to access information on public sector assets?

In our experience, communities have often not been given enough time to respond to the news that public assets are being placed on the market.

Again, the National Forest Land Scheme may provide a model for other public bodies: assets once identified as surplus are “pre-notified”, giving an opportunity for community interest to be declared prior to formal marketing.

A single web site could be established, on which all public bodies post a list of assets which have been identified as likely to be sold in the forthcoming financial year.

Q31. What, if any, changes should be made to existing legislation on allotments?

Q32. Are there any other measures that could be included in legislation to support communities taking forward grow-your-own projects?

Q33. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 2. Please also give us examples of any definitions that you feel have worked well in practice

PART 3: RENEWING OUR COMMUNITIES

Q34. Should communities have a right to use or manage unused and underused public sector assets?

Yes

a). In what circumstances should a community be able to use or manage unused or underused public sector assets?

Broadly under the same principle outline in the response to Q22: i.e. where there is an appropriate community body which can deliver additional public benefit.

b). What, if any, conditions should be placed on a community's right to use or manage public sector assets?

Conditions on use should be assessed on a case-by-case basis, and be only what is required to protect the reasonable interests of the public body.

c). What types of asset should be included?

In the right circumstances most if not all classes of assets may have a 'meanwhile' use. It is probably easier to exclude particular kinds of assets which would be inappropriate for a meanwhile use. The determining factors should be the length of any under use (past and future) and the social and economic benefit which could be delivered.

Q35. Should a temporary community use of land be made a class of permitted development?

Yes

Q36. Should measures be introduced to ensure temporary community uses are not taken into account in decisions on future planning proposals?

Q37. Are there any other changes that could be made to make it easier for landlords and communities to enter into meanwhile or temporary use agreements?

Q38. What changes should be made to local authorities' powers to recover costs for work they have carried out in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

Q39. Should a process be put in place to allow communities to request a local authority exercise their existing powers in relation to dangerous and defective buildings under the Building (Scotland) Act 2003?

No comment.

Q40. Should communities have a right to request a local authority use a compulsory purchase order on their behalf?

Yes

Q41. Should communities have a right to request they take over property that has been compulsory purchased by the local authority?

Q42. Should local authorities be given additional powers to sell or lease long-term empty homes where it is in the public interest to do so?

Yes

Q43. Should local authorities be given powers to sell or lease long-term empty and unused non-domestic property where it is in the public interest to do so?

Yes

Q44. If a local authority enforces a sale of an empty property, should the local community have a 'first right' to buy or lease the property?

Yes

Q45. Please use this space to give us your thoughts on any definitions that may be used for the ideas in Part 3. Please also give us examples of any definitions that you feel have worked well in practice

Q46. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on particular group or groups of people?

Q47. Please also tell us what potential there may be within these ideas to advance equality of opportunity between different groups and to foster good relations between different groups?

Q48. Please tell us about any potential impacts, either positive or negative, you feel any of the ideas in this consultation may have on the environment?

Q49. Please tell us about any potential economic or regulatory impacts, either positive or negative, you feel any of the proposals in this consultation may have?

No comment