



REPORT TO: THE MORAY COUNCIL ON 25 MAY 2016

SUBJECT: COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

BY: CORPORATE DIRECTOR (CORPORATES SERVICES)

1. REASON FOR REPORT

- 1.1 To inform the Council of the consultation on the proposed secondary legislation (draft guidance and regulations) covering two areas of the Community Empowerment (Scotland) Act 2015 and to discuss how the Partnership should respond.
- 1.2 This report is submitted to Council in terms of Section III (A) (21) of the Council's Scheme of Administration relating to the consideration of any Provisional order, Parliamentary Bill or Statutory Instrument.

2. RECOMMENDATION

2.1 It is recommended that the Council :

- i) notes a request by the Scottish Government for responses on proposed secondary legislation covering two areas of the Community Empowerment (Scotland) Act 2015;**
- ii) considers the information made available on the areas for consultation which are:**
 - Part 2- Community Planning – draft guidance**
 - Part 3- Participation Requests – draft regulations**
- iii) considers the attached draft responses to parts 2 and 3 (attached as APPENDICES 1 and 2); and**
- iv) agrees a response to the consultation**

3. BACKGROUND

- 3.1 The Community Empowerment (Scotland) Bill was passed by the Scottish Parliament on 17 June 2015 and received Royal Assent, becoming an Act, on 24 July 2015.
- 3.2 The purpose of the Act was to extend the community right to buy, making it simpler for communities to take over public sector land and buildings, and strengthening the statutory base for community planning, including a greater involvement in decision making.

- 3.3 The Act has 9 distinct sections including the sections on community planning, participation requests and community asset transfers.
- 3.4 The Scottish Government have embarked on a consultation on regulations and guidance on Parts 2, 3 and 5 of the Act. The consultation was launched in March and the consultation closes for submissions for:-
- Part 2 on 13 June 2016
 - Part 3 on 15 June 2016
 - Part 5 on 20 June 2016
- 3.5 Part 5 of the Community Empowerment (Scotland) Act 2015 and the proposed response is a separate item on this agenda.

Part 2 – Community Planning

- 3.6 Part 2 of the Act is on the draft guidance and regulations for Community Planning. This section seeks to provide a renewed vision for community planning and seeks to provide partnerships and authorities with a clear understanding of the nature and extent of the support required.
- 3.7 The Act expands the number of authorities that are subject to community duties and is on the draft guidance and regulations for Community Planning. This section seeks to provide a renewed vision for community planning and to provide partnerships and authorities with a clear understanding of the nature and extent of the support required.
- 3.8 Partnerships will be required to:-
- prepare and publish a local outcomes improvement plan (LOIP) which sets out the local outcomes which the CPP will prioritise for improvement,
 - identify smaller areas within the local authority area which experience the poorest outcomes, and prepare and publish locality plans to improve outcomes on agreed priorities for these communities. The outcomes for improvement in a locality plan may differ from those in the local outcomes improvement plan (LOIP),
 - review and report publicly on progress towards their LOIP and locality plans and keep these plans under review.

Part 3 - Participation

- 3.9 Part 3 of the Act introduced participation requests which will be a new process that will allow community bodies to enter into dialogue with public authorities about local issues and local services in their terms. Where a community body believes it could help improve an outcome it can request to take part in a process to improve that outcome. Community bodies may wish to take part in discussion with service providers on how they might better meet the needs of service users or even propose they take over the delivery of that service.
- 3.10 The consultation on part 3 is on the draft regulations. Guidance will be published once ministers have decided on the final regulations.

4. **SUMMARY OF IMPLICATIONS**

(a) Moray 2023: A Plan for the Future/Service Plan/Health and Social Care Integration

The Community Empowerment (Scotland) Act 2015 will allow greater enhancement of the Moray community planning structure and should assist in greater [partnership working]. The increased focus on community engagement is reflected in the latest version Moray 2026 plan for the future.

(b) Policy and Legal

Community planning is redefined in part 2 of the Community Empowerment (Scotland) Act 2016. This report deals with the secondary legislation around this and the initial regulations around Part 3 about participation requests. There is no guidance at this stage how the participation requests align with existing procurement policies and legislation.

(c) Financial implications

There are no immediate financial implications arising directly from this report. However, implementing part 2 will have resource implications as there is no capacity at present to prepare and monitor locality plans. Dealing with participation requests, may be less of an issue, although the council will be expected to promote this aspect of the Act, support those interested in participation and respond timeously to such requests.

(e) Risk Implications

None arising directly from this report, however, there are risks to the authority in the Councils capacity to absorb the significant changes of approach and the additional responsibilities.

(f) Staffing Implications

There are a number of Staffing issues in that new ways of working and increased emphasis on community engagement which partners are expected to support capacity building particularly and working with those sections of the community who are otherwise less engaged than other parts of the community such as those experiencing inequalities of outcome and disadvantage.

(g) Property

There is no direct property implication arising from this report.

(h) Equalities

The Community Empowerment (Scotland) Act aims to encourage participation from those people who are less engaged than other parts of the community such as those experiencing inequalities of outcome and disadvantage.

(i) Consultations

The author worked with the Corporate Director (Corporate Services) on drafting the report.

5. CONCLUSION

The Community Empowerment (Scotland) Act was enacted on 24 July 2015. The Government are carrying out a consultation on 3 elements of the act. The Moray Council is requested to consider responses to these consultations.

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Community Planning and Development Manager
The Moray Council

Background Papers:

The links to the three consultations are below

<https://consult.scotland.gov.uk/community-empowerment-unit/community-planning-guidance>

<https://consult.scotland.gov.uk/community-empowerment-unit/participation-request-regulations>

APPENDIX 1



Community Planning under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Guidance and Regulation

RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response.

Are you responding as an individual or an organization? (required)

Individual

Organisation

What is your name or your organisation's name? (required)

The Moray Council

What is your phone number?

01343 563404

What is your address?

Council Buildings
High Street
ELGIN

What is your postcode?

IV30 1NZ

What is your email?

john.ferguson@moray.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference: (required)

- Publish response with name
 Publish response only (anonymous)
 Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

APPENDIX 1**Community Planning under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Guidance****Questions**

Q1: The guidance identifies a series of principles for effective community planning. Do you agree with them? Should there be any others?

Please explain why.

The Moray Council agrees with the principles and the broad ambition of the Act in relation to effective community planning, however, the Local Improvement Outcome Plans will present organisational challenges. The Moray Council and the Community Planning Partnership will agree an approach with all community planning partnership board members. We note the expansion of public sector bodies subject to community planning duties. We seek guidance on whether or not all 10 bodies should have a seat on the community planning board (which we would oppose) or will it suffice to have them represented on one of the seven community planning partnerships which sit below the CPP board. For example the Cairngorm National Park Authority is represented on our Economic Development Partnership. We also note that there is no mention of the voluntary sector in the list of public sector bodies or the list of additions whereas in Moray the local Third Sector Interface has a place on the Community Planning Board.

We have established a senior officer group (Community Planning Officers Group CPOG) which is instrumental in driving an agenda leading to the contribution of funds , staff and resources for specific outcomes. The advent of Integration Joint Boards is considered a major step forward towards a more general pooling of the community planning partners' budgets

Q2: The draft guidance sets out common long-term performance expectations for all CPPs and community planning partners. Each CPP will adopt its own approach towards meeting these expectations, reflecting local conditions and priorities. Even so, do you think there are common short- or medium-term performance expectations which every CPP and partner should be expected to meet? If so, what are they?

The Moray Council would commend the model adopted in Moray of a ten year rolling plan which has been agreed and adopted by all partners in the Moray CPP. The plan contains improvement targets for each of the seven partnerships (economy, public protection, health and social care, children and young people, community engagement and employability) and the board holds each partnership to account in the delivery of these targets.

We welcome the acceptance that there will be local flexibility to meet the ambitions of local communities.

Q3: The 2015 Act requires CPPs to keep under review the question of whether it is making progress in the achievement of each local outcome in their LOIP and locality plan(s). CPPs must, from time to time, review their LOIP and locality plan(s) under review, and to revise them where appropriate. Even with this, do you think the statutory guidance should require CPPs to review and if necessary revise their plans after a specific period of time in every case? If so, what should that specific period be?

No

Please explain why.

In Moray we have worked with partners to develop a system that allows review and updating of our Moray Plan on a two yearly basis . This model can be adopted for LOIPs, but their effective introduction will take time, consultation and resources.

Government joint inspections are increasingly being carried out at a CPP level so the opportunity to monitor the progress of community plans are being reviewed and revised. We therefore can see no reason to compel review and revision, but instead clear and supportive advice should be provided within the guidance.

Q4: What should the statutory guidance state as the latest date by which CPPs must publish progress reports on their local outcomes improvement plans and locality plans?

Other

If other please provide timescale. Please explain why.

This response is based on the assumption that we agree with the limited timescales for response. In Moray the CPP has a Moray 10 year plan in place. This has been reviewed and updated and this process will continue on a two yearly basis .The four and six month suggestions would be overly bureaucratic and would encourage a 'tick box' approach rather than effective review and target update. The model of either 4 or 6 month review is, rejected as, unworkable.

Q5. Do you have any other comments about the draft Guidance?

The key factor in the development of community planning must be local flexibility and acceptance that there are geographic and population differences as well as a broad range of differences in CPP implementation.

Q6. We propose that the draft regulation for locality planning should set one criterion only, which is a maximum population permissible for a locality. Do you agree? What are your reasons?

Moray, like many other authorities in Scotland, is a hugely diverse area. So are our main conurbations. Localities have little to do with population size and therefore, setting this as a criteria is likely to misdirect the public and public services attempting to interpret and implement the Act. The guidance should go no further than highlighting the importance of addressing disadvantage and deprivation, not necessarily those identified through SIMD or other Government measurements. It will be important to allow CPP's who will apply an understanding of local circumstances and can best implement locality plans in their area. We would also take this opportunity of highlighting concerns in relation to the resources required for the successful implementation of locality planning, this is a significant and largely new commitment for public services and this should be recognised by the government when setting its budget.

Q7: The draft regulation sets a maximum population size for localities subject to locality planning of 30,000 residents. It also proposes an exception which allows a CPP to designate a local authority electoral ward as a locality even where its population exceeds 30,000 residents. Are there circumstances in which these criteria would prevent a CPP from applying a reasonable approach to locality planning? What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size were set at (a) 25,000 residents or (b) 20,000 residents?

As noted in the previous response any limit set in the guidance is likely to be misleading and should, therefore, not be included.

What difference would it make to how localities were identified for the purposes of locality planning in the CPP area(s) in which you have an interest, if the maximum population size was set at (a) 25,000 residents or (b) 20,000 residents

We disagree with setting of the population criteria at a Government level, Moray has a ten year rolling plan and we are aware of localities of varying population size where locality planning would be appropriate and would benefit from a targeted input of consultation and resource. This will take time but it is essential that this is done with local knowledge.

Q8: Do you have any other comments about the draft Regulation?

No

Q9: Are there any equality issues we should be aware of in respect of local outcomes improvement plans and locality plans?

The response we submit is based on our aspirations for greater equality across Moray.

APPENDIX 2**Consultation on the Draft Participation Request
(Procedure)(Scotland) Regulations 2016****RESPONDENT INFORMATION FORM**

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Organisation

What is your name or your organisation's name? (required)

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APPENDIX 2

Participation Requests under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

Questionnaire

Q1: Should the use of a statutory form be required in the regulations?

Yes

Please give reasons for your response.

It is a formal process that may have an impact on procurement or policy and a statutory form would assist the community organisation to think through in clear terms the reasons why they wish to participate. However, it is likely that there will be many lessons to learn in the first few years and in the absence of that experience, for the time being a statutory form should not be included. Meantime, it would be helpful for the Scottish Government to issue the public sector with a model form (i.e. as provided at Appendix B of the draft regulations, incorporating improvements arising from the consultation), which could be adapted to meet local needs.

Q2: Should it be possible for a community body to put in a participation request without using a form?

Yes

Please give reasons for your response.

As an initial expression of interest a letter or statement could be used at the earliest stage. A form could then be used to focus thinking and formalise the approach.

Q3: What else might a statutory form usefully cover beyond the example set out in Annex B?

The accompanying note to section 4. of the draft form could usefully be expanded to ensure that a request includes more information about the suitability of the organisation seeking to improve a local outcome. Rather than asking for "any knowledge, expertise and experience" ask for "full details of all relevant knowledge, expertise and experience."

The accompanying note to section 5. Could ask the applicant to specify the measure that should be used to assess the success, or otherwise, of their proposal.

Q4: Is 14 days a reasonable amount of time for additional public service authorities to respond?

Yes

If not, please suggest an alternative timescale and explain reasons for the change.

Based on current delegation arrangements, it is unlikely that a council official would have the authority to provide a response. As committees tend to meet on an eight weekly cycle it is likely that the timescale would need to be extended considerably, or the council would be required to establish a separate mechanism for dealing with such requests.

Q5: What, if any, are the particular/specific ways that public service authorities should promote the use of participation request?

It should be integral to the increasing number of routes for community engagement such as user forums existing networks of Third Sector, voluntary and community organisation. In Locality Planning the options to participate should be central to the planning of any engagement process.

Q6: What are the ways that public service authorities should support community participation bodies to make a participation request and participate in an outcome improvement process that should be set out in the regulations?

This is a complex issue because, for communities' users or groups to participate, a degree of capacity building is required prior to a request being able to be made. That support should go beyond the traditional community development support, to specialist input from services that are involved in the outcome targeted. This should also apply to the provision of information and support in making a request and participating in that outcome improvement process. Support will also be required through the actual participation in the outcome improvement process

Q7: What types of communities could the regulations specify that may need additional support? Please give reasons for your response.

Any community participation body that that can justify their reasons for participation in the outcome improvement process but may lack the skills and knowledge to do so immediately. It is important that this kind of support is assessed and decided locally and there is a danger if a generic approach particularly in rural areas of excluding community participation bodies that may not be listed.

Q8: How long should the public service authority have to assess the participation request and give notice to the community participation body? Is 30 days a reasonable amount of time?

No

If not, how long should the period for making a decision be? Please give reasons for your response.

Based on current delegation arrangements, it is unlikely that a council official would have the authority to provide a response. As committees tend to meet on an eight weekly cycle it is likely that the timescale would need to be extended considerably, or the council would be required to establish a separate mechanism for dealing with such requests.

Q9: Are there any additional information requirements that should be included in connection with a decision notice? Please give reasons for your response.

Outlining clearly the reason why the decision was accepted (to clarify expectations) or refused. This should identify the positives as well as the specific reasons for refusal. It should also allow for a community participation group to reply with some indication of what would be expected and sources of support and information.

Q10: What other information, if any, should the regulations specify should be published in relation to the proposed outcome improvement process? Please give reasons for your response.

It would be helpful to explain the outcome improvement process as an introduction and to include the key reason(s) for the inclusion of the community participation body in the improvement process.

Q11: What other information, if any, should the regulations specify should be published in relation to the modified outcome improvement process? Please give reasons for your response.

The reasons why input from the community participation body or public authority amended the outcome process as well as how there needs to be a why. This could be addressed by including requiring the inclusion of the measurement to be used to demonstrate that the improvement has been achieved.

Q12: Section 31 sets out the aspects that the report of the outcome improvement process must contain. What other information, if any, should the regulations require the report include? Please give reasons for your response.

Reference was made above for the need to specify how the improvement should be measured and this should also be covered in this section. Also, it should identify any improvements that need to be made for future outcome improvement processes and identify key lessons that need to be applied. This evaluation approach is important in developing this approach

Q13: Do you have any other comments on the draft Participation Request (Procedure)(Scotland) Regulations 2016?

There needs to be consideration how public authorities support community participation bodies and the relationship that could develop. Capacity building of communities both of geography and of interest or need. The resourcing of community learning and development and the training of community work support through either the public or third sector needs to be resourced to allow those communities who are less likely to engage but whose input would be valuable to an outcome improvement process. Finally, the council does not have capacity to absorb this and many other areas of the Act, and, in the absence of a commitment from the government to provide additional resources, it is difficult to envisage how it can be successfully implemented.