

Draft Response to the Community Empowerment Bill – Midlothian Council

Q1. Do you agree with the definition of community body at section 1?

No.

Do you have any changes to suggest?

- We would have serious concerns about including unincorporated bodies within a definition for this purpose, as lack of incorporation would expose individual members of the community body to significant liability. We would not consider transferring an asset to an unincorporated body.
- The definition of a community body should include not just companies limited by guarantee but also other legal forms constituted for community benefit: for example SCIOs and CICs.
- We would suggest that the definition of the community to which the body relates should be specifically expanded to include communities of interest, who may not be bound by geography.

Q2. Do you agree with the list of public bodies to be covered in this Part at Schedule 1 (Annex C page 21)?

Yes, although consideration should be given to including the Forestry Commission and the Crown Estate.

What other bodies should be added, or removed? See above

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)?

The length of time required for a community body to create a fully worked proposal for asset transfer depends on a range of factors including:

- -Nature/scale and condition of the asset
- -Necessity of refurbishment/significant capital works
- -Nature/capacity of the community body
- -Proposed uses of the asset
- -Demonstration of demand/business case
- -Availability of funding and finance packages, and timescale for securing funding. Some funding streams can take more than two years from the point of initial contact to a final decision on a capital grant.

Therefore we would suggest that the public authority should consider all of the above before setting a timescale for concluding a contract for asset transfer. The public authority should be able to demonstrate solid reasons for needing to conclude a contract within six months.

Q4. Do you agree that community bodies should have a right of appeal to Ministers as set out in section 8?

No

Are there other appeal or review procedures that you feel would be more appropriate?

Local councils are locally democratically accountable; at least the first stage of appeals to local elected members should be through their local governance structures. This would be more in line with the localism / subsidiarity/ strengthening local democracy principles of this legislation.

Two further options could be considered:-

- (1) Appeals could be considered by the Scottish Public Services Ombudsman.
- (2) An external Independent Review Panel could be established to hear appeals. This could include an element of peer review by including Local Authority representatives on the Panel

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

Any review process in relation to local authorities needs to include:

- whether the local authority has an appropriately robust community asset transfer policy;
- examination of the scoring criteria utilised in the assessment of bids and how such criteria are applied;
- The extent to which there may be political involvement or interest in individual bids, particularly in cases where there may be two or more conflicting bids for a single asset and whether appropriate declaration of interest arrangements have been in place.
- The accountability of the final decision on an asset transfer request to the above policy and to a robust assessment procedure.

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

S3(4)(c) The community body will need to obtain a valuation of the property, or other information before making an asset transfer request. This is likely to require the co-operation of the relevant authority.

S5 (3) (b) requires the relevant authority to take into account any information provided in support of the request. However this does not specify the right of the authority to request additional information, nor is it strong enough. It should be mandatory for relevant authorities to take account of:

- the governance and operational capacity of the community body
- the robustness and sustainability of the business plan when considering a transfer request
- public interest

Where the relevant authority assesses the capacity or governance arrangements to be inadequate, it should specify any reasonable changes or improvements that are required and there should then be a period during which the request (with the associated timescales) is temporarily suspended while the community body addresses those concerns. The relevant authority should be required to provide advice and assistance during this process, either directly or through a third party, such as the local Third Sector Interface. "Governance" here refers not only to the constitutional arrangements, but to the existing implementation of

them. Where the authority considers the business plan to be insufficiently robust the community body should, similarly, be given a period to amend and resubmit this.

S3 (4) (c) should be expanded to include local employment opportunities and training provision.

S7 the proposed prohibition on the disposal of land only applies in instances where the relevant authority has agreed a request. A disposal during the process is more likely to take place when an authority is minded to refuse the request and the section should take effect from the date on which a transfer request is received. However, the prohibition, including circumstances covered under s7 (5), should not retrospectively apply to existing contracts or other obligations or render such provisions void. Where an authority refuses a request, the prohibition on alternative disposal should remain in force until the end of the appeal period.

The Bill should include provision for an authority to deal with two or more transfer requests in relation to the same property or land, clarifying the criteria on which competitive proposals may be judged, and clearly defining the reasons for, and extent to which, unsuccessful bidders may seek review, to avoid lengthy delays and potential for costly litigation

The 2013 CLD Regulations require CLD partners to target resources to community need. Could there be an explicit reference in the Bill recognising that supporting communities to make effective and equal use of its provisions is a need that should be taken into account in that context?

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

Ideally the cost savings come through the transfer of liability for long term maintenance and running costs of assets. However, this is balanced by the loss of any income generated by the asset. In many cases, the assets considered for transfer are those that have been running at a loss or standing vacant, often for many years, often without any significant maintenance or repair. The potential for these to be run sustainably by community bodies is often questionable, so the viability of any proposed business plans must be considered very carefully in order to assess the long-term potential of making savings. Cost savings should come mainly through more effective co-production of services with communities and enabling the strengthening of community assets in order to prevent future demands on spending. There will, or should, however be additional costs in order to provide adequate support to enable community groups to take part in the process effectively and on an equal basis, including a need for community development/ community capacity building support

Q8. Do you agree with the definition of community body at section 11?

No.

Do you have any changes to suggest?

This whole section appears to conflate the engagement and potential participation of community bodies in the design of services (co-design) with their involvement in service delivery (co-delivery). While these two things may ultimately be part of a common process of co-production, it does not (and should not always) necessarily flow from a process of participation or co-design.

We would suggest that all community stakeholders who have an interest in a service, regardless of whether they comprise a formal 'body' of any sort, should have a role to participate to some level in the design and/or improvement of services affecting them. This participation should be sought by public bodies, rather than be reliant on pro-active requests from the community.

Obligation should fall upon public authorities to engage as widely and appropriately as possible on the planning and design of services. Through the Local Government in Scotland Act 2003 and

requirements for Community Planning, public authorities already have a duty to engage with community stakeholders, whether or not these comprise formal bodies—and should be given continuing guidance and access to support and best practice to do this effectively.

However, participation in the delivery of services is a more complex matter. Please see the comment above regarding liabilities potentially incurred by unincorporated bodies; this would equally apply with respect to a community body involved in the delivery of services. The extent to which the community body engages in actual service delivery must depend on its capacity to do so- including whether it is incorporated in an appropriate way, its governance, any track record of service delivery.

Q9. Do you agree with the list of public bodies to be covered in this Part at Schedule 2 (Annex C page 21)?

Yes

What other bodies should be added, or removed? N/A

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?

No

Is there anything you would add or remove?

We welcome proposals to encourage greater participation in democratic processes and decision making, and to encourage communities to become involved in the decisions that most affect them.

However, this section of the Bill is unnecessarily complicated for both communities and public authorities and is, we believe, unlikely to achieve the desired outcome. The section may be generally appropriate for community bodies that wish to be involved in service delivery, but is not necessary for those who only wish to engage with the authority to influence the decision making process and ensure it acts to improve an outcome.

Some of the many difficulties we envisage with this section include:

- Whilst the spirit of the legislation is to empower communities to participate, in practice it sets out a series of barriers and hurdles that will make it hard for them to do so. For example, a representative group of people may come together because of a specific concern (e.g. inadequate public transport provision), but not be an existing organisation. They would not be able to request participation because they do not have a constitution. Even if they do adopt one, they may not be able to meet the criteria required to have the right to make a written request.
- The proposed process is bureaucratic and is likely to lead to a considerable amount of litigation in relation to the definition and implementation of outcomes and outcome improvement processes.
- Different participation requests and outcomes require quite different mechanisms to deal with them. The requirement to establish an “outcome improvement process” is therefore not helpful as each request would have to be considered on its own merits. Some participation requests may simply require a single meeting between two parties, whilst others could lead to a long-term project involving many partners and community organisations to consider ways of dealing with the issues raised.

- The requirements in Section 13 relating to a participation request may be unduly onerous for many community bodies, and may serve to further exclude the most vulnerable or marginalised people who may not be represented by formal groupings.
- Many valid community concerns in practice concern several related outcomes. At the same time there is a relatively poor understanding of the term “outcome” within the wider community. It is quite likely therefore that any written request would fail to specify an outcome at all, or to specify only one when in fact the concern is a broader one about the service provision or delivery.
- There may be doubt about the definition of an “outcome”. Is it limited to one that the authority has previously defined e.g. in the SOA? Most services have additional outcomes in addition to those that they were designed to achieve. How will an authority be expected to deal with a request where a community body identifies an “outcome” that is not currently part of the intended service provision?
- Will an authority be able to refuse a request when it considers that the outcome is already being achieved to the desired standard?
- The requirement to set up an outcome improvement process and to report on every request received under this section could put unreasonable demands on a public authority, and divert valuable time and resources into non-priority areas of work
- It is unclear how the criteria in s15 (c) would apply in some valid circumstances (for example public transport provision) and could be used to refuse otherwise reasonable requests to participate.

There are already a number of processes through which community groups can engage and participate, for which there is a range of existing legislative provision. Community Planning Partnerships are already required to engage with local communities on the development of SOAs and the proposals elsewhere in this consultation strengthen this.

In light of this we would prefer to see this section replaced with a general right to participate, by requiring public authorities to consider any reasonable request to participate in a decision making process. The decision as to whether or not to accede to the request could take into account questions such as:

- Is the body making the request appropriately constituted for the work in which it wishes to become involved? (This could in certain circumstances mean that unconstituted groups could make a valid request)
- Does the body represent a genuine interest group?
- What benefits would arise if the request were granted?
- Is the request frivolous, trivial or vexatious?
- Are there already a consultation / participative process in place?
- Any other relevant considerations

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?

See above answer

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

Ideally we should work for a system where participation in outcomes is offered without the need for formal requests. Arriving at this situation will require offering potential users of these provisions the opportunity to participate in learning and community development processes

Q13. What costs and savings do you think would come about as a result of these draft provisions?

As with Asset Transfer, the potential for savings depends upon a wide range of factors which will vary from service to service. It should never be assumed that service delivery by the community sector is automatically the 'cheap' option.

The long term sustainability of public services must be considered. There is often limited potential for social enterprise to generate sufficient revenue to sustain resource-intensive public services reliably for long periods, or for these to be subsidised by non-public sector grants.

The quality and cost-effectiveness of co-produced public services will depend upon effective partnership working between community bodies and the public sector. This partnership is not necessarily a result of a 'formal' request for participation but something that results from ongoing dialogue and collaboration.

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?

See comments above on how this might be enhanced.

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?

Yes

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

Yes

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

Provided it is clearly in the public interest, then in principle we would agree with the extension of community right to buy to the whole of Scotland. We however consider that the right needs to meet a public interest test and a definition of public interest needs to be provided through regulation or statutory guidance.

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"? What other land should also be considered as being "registrable"?

Ministers should be permitted where appropriate to extend registered land by delegated authority.

Q19. Do you think that there should be a compulsory power for communities to buy neglected or abandoned land in certain circumstances? What should these circumstances be?

Whilst the Council is in agreement that in certain circumstances compulsory purchase powers should be available to acquire neglected or abandoned land. These powers should however lie with Local Authorities to enable them to act on behalf of and at the request of communities - subject to those communities providing the funds to support the acquisition and that the Council are convinced of the merits of the acquisition and strength of community support for such a proposal. This may require a ballot.

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

Giving these terms a definition that is consistent and widely applicable is difficult. Properties can be considered as neglected but not be abandoned. In considering abandonment there can appear to be many reasons why properties are thought to be abandoned; legal disputes; inheritance issues; the rights of heritable creditors etc.

A property might however be considered abandoned if it has been unoccupied for a significant length of time 5+years, it is not being maintained and is deteriorating, or has been or is subject to environmental complaints, dangerous building notices, outstanding charges against them Councils already have a lot of powers to deal with these types of buildings and more emphasis should be placed on encouraging the use of these.

The Council also considers that many of these issues can be dealt with under the provisions of the proposed Defective and Dangerous Building (Recovery of Expenses) (Scotland) Act.

Q21. Do you think that the criteria to be met by a community body in section 38(1) of the Act are appropriate? Do you think that there should be additional criteria? Please set out what changes or additions should be made to the criteria.

Yes.

Q22. Do you think that the information that is included in the Register of Community Interests in Land is appropriate? If not, what should that information include?

Yes – whilst extensive, if parties are genuinely interested and committed, then the provision of such information is appropriate and deters ‘speculative’ registrations.

Q23. How could the application form to register a community interest in land be altered to make it easier to complete (e.g, 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? Do you have any other suggestions?

No. Inclusion of further details in respect of the provisions of s.38(1) are considered appropriate as they confirm the need for and level of community involvement.

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

No. The draft bill gives communities the right to register interest in any land in their community. Communities should consider their needs and identify those properties which meet those needs. In this regard they should /could effectively develop a schedule of ‘properties of interest to the

community'. In doing so existing owners would have clear awareness of community interest in their land. Including provision for late inclusion could due to potential delays caused by the inherent process cause landowners' unforeseen hardship and delay.

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.

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. But we would be mindful that this can be an extended process, and in circumstances where communities have previously registered interest and properties have been brought to the market and then withdrawn – then if that event has occurred within 2 years of the ending of the 5 year period then the communities right to buy should be preserved for a period sufficient to allow them to confirm or otherwise their continued interest in the application.

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.

Taking into account the interests of both landowner and community body a period of 6 months or such other period as mutually agreed by the parties. Any longer period would penalise the landowner unless they were prepared to agree to this, and any lesser period would equally penalise the community body as it would provide insufficient time scale.

6 months reflects market practice in the transaction of property interests between willing parties.

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

The Council have no experience of these processes and do not consider it appropriate to comment on these timescales

Q29. Do you agree that Scottish Ministers should organise the undertaking of a community body's ballot and pay its costs? If you disagree, please provide your reasons.

Yes

Q30. Should Scottish Ministers notify the ballot result to the landowner? Please explain your reasons.

Yes – in the interests of openness and transparency

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? Please give reasons for your view.

Yes; a standard pro-forma would promote consistency of approach, ensure a minimum standard of information is provided and, in circumstances of competing community interests, provide a basis for comparison of proposals.

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?

We would agree that the use of these geographically defined, community areas, are appropriate and accord with the ballot process.

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

Yes , ‘natural communities’ can be defined as geographies that share common services, both public, retail, commercial and social , or may be communities of interest, or of need (such as membership of a protected characteristic equalities group) . However even adjacent neighbourhoods in urban and semi urban areas may be defined by social class/ income with housing tenure type the most visible example of this divide even where they share common services. For the purposes of a ballot however , the use of geographic boundaries appears the practical approach .

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

Q35. Do you agree that Scottish Charitable Incorporate Organisations (SCIO)’s should be able to apply under the provisions?

Yes

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

The definition of a community body should include not just companies limited by guarantee but also other legal forms constituted for community benefit: for example SCIOs and CICs.

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?

It is unclear why this would be undertaken by Scottish Government at all rather than at local council level, unless the “community body” is a national body. Local Councils are able to ensure that community bodies are appropriate legal entities to undertake right to buy within the terms of any legislation.

Q38. Do you think that the length of a registered interest in land should remain as 5 years or be changed? If it should be changed, how long should it be – and what are your reasons for making that change?

The period of 5 years should remain

Q39. Do you agree that the valuation procedure should include counter representations by the landowner and community body? If you disagree, please give your reasons for your decision.

Yes all parties should be permitted to make have a ‘right to respond’ to ensure that parties concerns are understood and accounted for in the valuation procedure.

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? Please explain your reasons.

No. Inclusion of such a provision amounts to compulsion by alternative means. The Council also consider this to have Human Rights Act implications.

The basis of valuation assumes a willing seller and if following a valuation the seller considers that their interest is worth more they should not be compelled to sell. Equally this should not be an excuse not to sell to the community; provided the valuation has been correctly undertaken taking account of all relevant circumstances and results in a value which is unacceptable then the purchaser does not have to accept it. They must however withdraw the property from the market. See also comments in answer to Q26.

Q41. Do you think that there should there be greater flexibility in a community body’s level of support for a right to buy in the ballot result than is currently permitted?

No. The ballot provisions are considered fair and reasonable and the ultimate test of community support.

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

See 41

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

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”? Please explain your reasons

Yes for reasons of transparency and openness

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)?

No; if an option agreement already exists and is registered against the land then this must take priority. The Community right to buy cannot be used as a means of subverting existing transactions.

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? Please explain your answer.

Yes. Option agreements are often held by development companies and those companies which hold the often form part of larger companies. Transfers between those companies should be permitted and treated as exempt.

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? Please explain your answer.

The general presumption is that delivery of a notice is the day following postage. There is considered no reason why commercial norms should not apply.

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.

Q49. Do you agree that where a landowner makes an “exempt” transfer, this should be notified to Scottish Ministers? If you disagree, please provide reasons for your decision.

Yes. In order to ensure records are up to date.

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. In order to ensure records are up to date.

Q51 Do you think that Ministers should monitor the impact of the community right to buy? How do you think that monitoring should be undertaken and what information should Ministers seek? Should the monitoring process be a statutory requirement, including provisions for reporting?

This is a matter for Ministers. The burden of collecting data and monitoring (either financial or administrative) should not fall to Local Authorities or Community Bodies.

Community planning section

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?

The council is supportive of any measures which strengthen local democracy, and community engagement and see the statutory establishment of CPPs as a positive steps in this direction. There are issues with the definition of “better outcomes”; however these can be addressed in practice rather by seeking an absolute definition in legislation.

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?

As a shared plan for outcomes is already practice in Midlothian, the council has no concerns about this aspect of the proposed legislation.

Q54. Do the proposed duties of the CPP support effective community engagement and the involvement of the third and business sectors? What other changes may be required to make this more effective?

Midlothian has a wide range of community stakeholders engaged in community planning structures and processes. The council welcomes strengthening the role of communities in community planning. Laying down a legal expectation regarding the exact format of this engagement may not be appropriate given the varying nature of communities across Scotland, of geography, interest and need. A clear requirement to demonstrate that community engagement has been undertaken should be included and should make no distinction between the business and other stakeholder communities. Expectations that the most vulnerable members of the community will be heard could be strengthened by reference back in guidance to the expectation that all the CPP partners will work to the existing national standards for community engagement.

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?

Midlothian has just completed an updating of constitutional arrangements for community councils, in line with the national guidance, using a co-production model to achieve this. Strengthening and supporting neighbourhood engagement expectations on this lowest tier of the statutory structure has been a theme in this area for some years, and it is on this basis that Neighbourhood planning has been developed in alignment with existing community council boundaries, but engaging wider stakeholders and crucially the wider public. The issues that have been raised by this process are currently under review, but initial evidence suggests that sharing evidence held by public bodies with the public and inviting them into a dialogue about what is possible within resources available in seeking to improve their quality of life and the quality of local services has the capacity to move conversations beyond demand /response to shared engagement in problem solving, including community self help. The ability of public bodies in this area to respond effectively has been limited not by unwillingness, but by a combination of resource constraints, larger strategic goals set by national agencies for local staff teams, and by the willingness or capacity of communities to take on responsibilities collectively for services which they have an expectation will be delivered through taxation (whether local or central).

Do the core duties set out above achieve that? What else might be required?

There is a need to recognise the interaction between regional development planning and community planning, as in areas such as Midlothian the physical social and economic structure of the communities that make up the area are subject to rapid and in some cases controversial change driven by housing and economic requirements agreed on a much wider geographic basis. Requiring regional development planning and local development to have due regard to community planning processes, structures and products would assist.

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?

Local Councillors represent the public in a unique way at CPP level, they are the only participants directly elected by a significant franchise. The 2003 legislation expects that they will show "civic leadership" rather than control, and as they are not in control of the actions of nationally accountable bodies or the actions of community activist led bodies, their role has been to lead partnership working, represent the broad interests of constituents, and to drive the policies and resource use of the council as a key partner. Officers of the council remain accountable through their chief operating officer to councillors, as well as directly to the public they serve. It is the duty of officers to give their best advice to councillors, accepting that councillors are the ultimate decision makers on policy and resources allocations. Engagement in community planning as facilitators does not alter any of these expectations. The role of non-executive directors set out in the UK Government's Higgs report is as follows;

- **Strategy:** Non-executive directors should constructively challenge and contribute to the development of strategy.

- **Performance:** Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitoring and where necessary removing senior management, and in succession planning.
- **Risk:** Non-executive directors should satisfy themselves that financial information is accurate and that financial controls and systems of risk management are robust and defensible.
- **People:** Non-executive directors are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and where necessary removing senior management, and in succession planning.

It is not clear from this definition which members of the CPP board are being referred to, as these functions are not exercised collectively under current arrangements, and it is hard to see how they would be, given the separate governance and accountability of each board member. Further clarification is required on this proposal .

Q57. Should the duty on individual organisations 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?

It would be helpful to adopt a combination of both suggested approaches. A general duty to work with CPP's can be applied to all public bodies, but there will be specialist national agencies that lack the capacity to fully engage at the local level. In these cases a level of contact and engagement suitable to the nature of the agency and its local impact could fall under a general duty clause. There are a set of core agencies with direct local impact- the Council, Police, Fire, and Health Services currently fall into this category in the 2003 legislation. There has been considerable disruption to local arrangements and flexibilities since the changes to Police and Fire Services. Steps are required to redress the balance back to local flexibility, in policing in particular.

A clearer legal expectation should be placed on Higher and Further education boards to develop plans with CPPs engagement during the planning process, rather than consulting on completed plans. This is complex as many of these institutions operate both nationally or internationally but also have a significant local economic impact. Edinburgh University a major internationally facing institution for example has invested over £70 million in Midlothian, with a significant potential economic, physical environment and employment impact in the CPP area.

Scottish Water has direct impact on the speed and location of housing and economic land development, SEPA and SNH on the natural environment of the area. Whilst it is true that they have fewer staff resources to participate in CPP business, it is also clear that their expertise is required to support CPP strategies. All these agencies should be more locally engaged and accountable through CPPs.

Scottish Enterprise was given a specifically national remit, when local economic development transferred to Council leadership. There is a real need to clarify the flexibility allowed to SE staff to respond to economic issues that emerge at CPP level.

The effective operation of the criminal justice system to reduce crime and improve public safety is a key issue for local communities, and the focus of CPPs on community safety has resulted in many improvements in prevention, diversion and enforcement .The public's access to and understanding of the wider system of prosecution, sentencing, punishment, victim support and offender rehabilitation remains limited and a subject of concern in neighbourhood and community planning. The revisions planned of the Community Justice Authority should be considered an opportunity to

redefine the connection between community planning with its community engagement core and the justice system, enabling better public access to debates about speed of justice, sentencing policy including community sentencing and restorative justice, support for victims and reducing re-offending. A greater duty on the legal system to engage with the communities it serves should be specified in the legislation.

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 councils have a unique position as local democratically accountable bodies. The expectation of subsidiarity at an EU, UK and Scottish level should also apply at the local level. That is, the maximum number of policy and resource decisions should be made as locally as possible by people accountable to their local electorate. The development of CPPs as a means to strengthen local focus require a cultural commitment by national and regional public bodies to a localism agenda. This can be best strengthened by joint working. In Midlothian leadership of CPP work is already shared between agencies , with employment strategies led by DWP, positive destinations for young people by Skills Development Scotland , social enterprise development by the third sector interface , early years by NHS and council jointly , community safety operations by the police , adult learning by an FE / HE widening access local college(Newbattle Abbey) , economic development by the chamber of commerce and enterprise, mental wellbeing by the third sector , financial inclusion by the third sector , whilst youth work and reducing child poverty have been led by the council.

Legislation should endorse such distributed leadership, placing requirements on CPPs to demonstrate this in annual reporting , alongside shared requirements to show community engagement and performance reporting . It must be clear in legislation that it is not solely the council whose performance as a facilitator of CP work is being scrutinised. Audit regimes need to be more challenging of partners rather than just councils and scrutinise their level of evidence of contribution to delivery of outcomes. Recent children’s services inspection work in Midlothian has not shown this breadth of cross institutional focus.

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?

The national commitment to reducing the volume of audits and the number of audit agencies has not yet been fully realised. The pace of change here needs to be increased. Supporting self evaluation practice and focus on impacts rather than processes has been welcomed where it has developed, but there are still inconsistencies across the audit agencies. Further streamlining by removing audit agencies , reducing the number of inspections and a focussing on supporting improvement by working with partners through agencies such as the Improvement Service are likely to enable faster improvement in outcomes . The demands for benchmarking and KPIs whilst now more co- devised, run the risk of replacing the previous overlapping external audits burden with another form of scrutiny burden that may go beyond the resources available .

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

Further legislation requiring shared budgeting and planning processes between public bodies and with engagement of the public may be required if the proposals in the current bill when embedded in practice do not result in the expectations being met.

Q61. Do you agree with the definition of an allotment site and allotment plot?

Yes, however we would like 172 (c) to state “voluntary organisations/community groups” to clarify that they are for non profit making purposes.

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?

In Midlothian there is only one council allotment. It has been argued that the reason for this is the relatively good garden ground afforded to private and council housing in this area. While this may have changed in recent years, a one size fits all provision of allotments based on population may not be fair given the different types of housing, population demographic and land availability in different areas. The issue of land supply will also mean that land potentially useable for another purpose, such as housing, may have to be re-allocated due to the duty on the local authority to provide a desired number of allotments – irrespective of demand.

The idea of an allotment plot large enough to feed a whole family probably doesn't match any more with the today's Scottish demographic. Smaller plots can produce plenty for 1-2 people households, and are more manageable for people with limited time or physical energy or both. They could also serve as a useful first introduction to cultivation for people new to gardening – less daunting than taking on a full size plot immediately

Q63. Do you agree with this duty to provide allotments?

There has been no representation from elected members, local communities or individuals to suggest they are dissatisfied with the duties or powers which the local authority discharges indicating there is not a local demand for any change. The implications of such proposal may be various; but serious consideration should be given to the costs of creating a new allotment along with car parking, security fencing, utility services; all to a standard that meets equalities legislation. This proposal would therefore require proper resourcing.

Are there any changes you would make?

While the proposal will be positive for organisations looking to lease or undertake a community asset transfer; however, the proposal described is actually to provide individuals with a guaranteed allotment plot within a specified timeframe. This seems very onerous as it will require land to be made into an allotment with all the consequent costs and will therefore need to be adequately resourced - which is increasingly difficult when facing future budget cuts. Such a policy would necessitate land being available in the correct geographical area for any individuals (or sufficient individuals to merit construction). If the provision for an allotment was by statute this may militate against (or compromise) the use of the same land where there is an existing (or potential) biodiversity, landscape, cultural or recreational value.

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

The positive impacts could be the conversion of relatively sterile open spaces with little or no community involvement into productive community spaces. The problem with a one size fits all allocation is that if there is very little local space available near to an area of demand there is a risk that places with biodiversity and/or landscape and/or cultural values are lost to an unsuitable use in the form of a growing space. This may not be a matter for statute but may be better demand-led. If it is intended to take forward such a proposal through statute a few pilot areas should be trialled to establish how local authorities might undertake such a piece of work. This would include case studies where the strategic plan has resulted in examples of best practice on the ground. This would enable guidance to be drawn up and, ultimately indicate the resources required to establish and maintain new growing spaces on a sustainable basis.

Q64. Do you prefer the target Option A, B or C and why?

C, as this allows the most flexibility .

Are there any other target options you wish to be considered?

We think it is particularly important that allotments and/or ground for community gardens are made available in areas of social deprivation (e. as set out in Scottish Index of Multiple Deprivation) as well as in areas where there is a waiting list. We believe that there are more likely to be waiting lists in areas where (a) there already are allotments; and/or (b) in more affluent areas where people are potentially more aware of their rights and of the benefits of gardening. If people live in an area without allotments, those individuals who could most benefit from access to allotments, may not be aware of them and/or the duties of local authorities to provide them. We believe also that, where possible, allotments should be easily available by public transport.

Q65. Do you agree with this list of local authority duties and powers?

Would you make any changes to the above list?

We would like to see the addition of a power to require new build housing development to contain either allotment land (to be administered either by developers, local authority, or voluntary group) or community garden space – particularly if a significant percentage of homes are flats.

Q66. Do you think the areas regarding termination of allotment tenancies listed above should be set out in legislation or determined by the local authority at a local level?

Local level.

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

Unclear what this question means

Q68 .Do you agree that surplus produce may be sold?

Yes, subject to it being non-commercial and proceeds reinvested back into the site and/or the local community and charities.

If you disagree, what are your reasons?

Q69. Do you agree with this list of subjects to be governed by Regulations?

Yes