



The Scottish Parliament  
Pàrlamaid na h-Alba

## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

### AGENDA

**31st Meeting, 2020 (Session 5)**

**Wednesday 2 December 2020**

The Committee will meet at 9.30 am in virtual meeting.

1. **Decision on taking business in private:** The Committee will decide whether to take items 5, 6, 7 and 8 in private.
2. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Aileen Campbell, Cabinet Secretary for Communities and Local Government, Emily Callaghan, SG Legal Directorate, Jessica McPherson, Local Government Policy Team, and John St Clair, SG Legal Directorate, Scottish Government.
3. **Community Wellbeing – Post-Legislative Scrutiny of the Community Empowerment (Scotland) Act 2015, parts 3 and 5:** The Committee will take evidence from—

Peter Scott, Planning Representative, Cramond and Barnton Community Council;

Iain Hamlin, Secretary, F.R.I.E.N.D.S. (Stevenston Conservation);

Mary Peart, Secretary, Community Out West Trust.
4. **Subordinate legislation:** The Committee will consider the following negative instrument—

Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No. 2) Order 2020
5. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.

6. **Community Wellbeing – Post-Legislative Scrutiny of the Community Empowerment (Scotland) Act 2015, parts 3 and 5:** The Committee will consider the evidence heard earlier in the meeting.
7. **Work programme:** The Committee will consider its work programme.
8. **Impact of Brexit on devolution:** The Committee will consider a draft response to the Finance and Constitution Committee.

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The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk

LGC/S5/20/31/1

Note by the Clerk

LGC/S5/20/31/2

**Agenda item 3**

LGC/S5/20/31/3

PRIVATE PAPER

LGC/S5/20/31/4 (P)

**Agenda item 4**

Note by the Clerk

LGC/S5/20/31/5

**Agenda item 7**

LGC/S5/20/31/6

**Agenda item 8**

LGC/S5/20/31/7

## Local Government and Communities Committee

31<sup>st</sup> Meeting, 2020 (Session 5), Wednesday 2 December 2020

### Stage 1 scrutiny of the European Charter of Local Self-Government (Incorporation) (Scotland) Bill

#### Note by the Clerk

1. This paper provides background information on the [European Charter of Local Self-Government \(Incorporation\) \(Scotland\) Bill](#), a Members Bill introduced by Andy Wightman MSP on 5 May 2020 for the Committee's evidence session with the Minister for Local Government and Planning. The Bill would incorporate the [European Charter of Local Self-Government](#) into Scots law. There is a Scottish Parliament Information Centre [briefing](#) on the Bill.

#### The European Charter of Local Self-Government

2. The Charter was drawn up in 1985 by the Council of Europe, an international organisation to promote democracy and protect human rights and the rule of law across the European continent. The UK's membership of the Council of Europe has not been affected by leaving the European Union. The Charter sets out 10 principles to protect the fundamental powers of local authorities and their political, administrative and financial autonomy. The UK Government ratified it in 1997.

#### The Bill

3. The Bill aims to strengthen local government by incorporating the Charter into Scots law. Andy Wightman MSP says in the [Policy Memorandum](#) accompanying the Bill that, the Charter is part of the UK's international legal commitments but it cannot be directly relied upon to settle cases in the Scottish courts. He wants people and organisations to be able to challenge the Scottish Government in court if its laws or decisions are not compatible with the Charter. The Bill sets out a legal mechanism that aims to achieve this. The Bill also has a section that puts a general duty to promote local government on the Scottish Government.

#### Local Government and Communities Committee's call for views on the Bill

4. The Committee was referred the Bill at Stage 1, meaning that its role is now to consider and report to the rest of the Parliament on the general principles of the Bill. After a pause owing to the coronavirus crisis, the Committee issued a call for views over the summer, posing five questions:

1. *The main aim of the Bill is to make the European Charter of Local Self-Government directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter [section 1 and 2]. Do you agree with this?*
  2. *Section 3 of the Bill puts a general duty on the Scottish Government to support local government. The Scottish Government must also report to the Scottish Parliament about what it has done to support local government at least once every 5 years. Do you support section 3?*
  3. *Section 4 of the Bill says all legislation must be interpreted in line with the Charter whenever possible. Section 5 allows a court to make a “declaration of incompatibility”. This is a statement that a provision in a piece of legislation is not in line with the Charter. Where this declaration has been made, section 6 gives the Scottish Government power to take action to fix this provision so that it is line with the Charter (section 6). Do you agree with these sections?*
  4. *Section 7 allows a court to limit the consequences of a ruling that the Scottish Government has not complied with a duty set out elsewhere in the Bill. For instance, the court could provide that the effects of the ruling don’t reach back in time. It can also give the Scottish Government some time to take corrective action to address the ruling. Do you agree with section 7?*
  5. *Do you have thoughts on anything else about the Bill, for example:*
    - *how quickly it should become law after it’s passed (section 10 says this should happen almost immediately)*
    - *what financial impact it will have if it becomes law*
    - *if it will have any positive or negative impact on equality or human rights.*
5. [Twenty responses](#) were received and published.

### **Evidence sessions and next steps**

6. On 18 November, the Committee heard evidence from two panels, comprising representatives of local government, academic experts and a think-tank. A link to the [papers is here](#) and to the [official report here](#).
7. The 2 December meeting is an opportunity to ask the Scottish Government whether it supports the Bill and whether it thinks it could be improved by amendment. The Scottish Government’s memorandum on the Bill is annexed to this paper. The Committee will discuss the evidence later in the meeting, in a discussion it is likely to agree to hold in private. The Committee will take closing evidence from the Member in Charge on 9 December and report to Parliament early in 2021. The Parliamentary Bureau is likely to propose a Chamber debate on whether to agree to the general principles shortly after the report’s publication.

## EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT (SCOTLAND) BILL

### WRITTEN SUBMISSION FROM THE SCOTTISH GOVERNMENT

#### Introduction

1. This memorandum has been prepared by the Scottish Government to assist consideration by the Local Government and Communities Committee of the European Charter for Local Self-Government (Scotland) Bill (“the Bill”), which was introduced by Andy Wightman MSP on 5 May 2020.

#### Background

2. The European Charter of Local Self-Government is a treaty of the Council of Europe and was adopted in 1985. It commits signatories to apply basic rules guaranteeing the political, administrative and financial independence of local authorities; and provides that the principle of local self-government will be recognised in domestic legislation and where practicable in the constitution. The UK ratified the Charter in 1998 and so the Scottish Government is bound to comply with it.

3. On 29 June 2018, Mr Wightman launched a consultation on a draft proposal for a Member’s Bill to incorporate the Charter into Scots law, which closed on 21 September. He lodged a final proposal on 4 December 2018 for such a Bill which was in the same terms as his consultation proposal, although he did not publish a draft Bill. He gained the support of [26 other MSPs](#), across all opposition political parties, so under the Parliament’s Standing Orders he obtained the right to introduce the Bill, which he did so on 5 May 2020.

4. Mr Wightman’s Policy Memorandum describes the objective of his Bill as :

“...[to] strengthen the status and standing of local government by incorporating the European Charter of Local Self-Government (“the Charter”) into Scots law.”

5. A fuller explanation of the Bill can be found [here](#) but it can be summarised as follows:

- places a duty on Scottish Ministers to act compatibly with the Charter Articles;
- places a duty on Scottish Ministers to promote local self-government;
- requires the courts to read and give effect to legislation, where possible, in a way that is compatible with the Charter Articles;

- enables the courts to declare legislative provisions to be incompatible with the Charter Articles, and enables Scottish Ministers to take remedial action, by regulations, in response to such declarations;
- allows the courts to suspend the effect of a decision that Scottish Ministers breached a duty imposed on them by the Bill, or remove or limit the retrospective effect of such a decision; and
- requires each person introducing a Public Bill in the Parliament to make a statement about the extent to which, in their view, the Bill is compatible with the Charter Articles.

## **Consultation**

6. Mr Wightman received 44 responses to his consultation, including from COSLA, the Society of Local Authority Lawyers and Administrators in Scotland (SOLAR) and seven local authorities. We have not conducted a full analysis of the responses but at the time there was broad support for the proposal.

7. Mr Wightman has summarised the key themes that emerged from the responses as follows:

- Strong support for the incorporation of the Charter into Scots law. There was majority support for incorporation in the manner set out in the consultation document but several alternative methods were also suggested.
- Just over half of respondents supported complaints being made to a commissioner in the first instance with recourse to the courts on appeal.
- In terms of the judicial remedy available where an executive action is found to be in breach of the Charter, there was overwhelming support for the court having the power to overturn the action (although the supporters were split about whether the court should also have the power to punish the public authority).
- In terms of the judicial remedy available where legislation is found to be in breach of the Charter, there was clear support in favour of the courts having the power to strike down the legislation over the suggestion the court could declare the legislation incompatible but be unable to strike it down

8. The Scottish Government did not formally respond to Mr Wightman's consultation.

9. Given the initial consultation was carried out over two years ago the Committee may want to consider if the views of stakeholders has changed and therefore may wish to consult with Local Government and judiciary stakeholders – including but not limited to – COPFS, COSLA, SOLAR and SLADE.

## **Financial Impact**

10. The Financial memorandum accompanying the Bill, sets out some limited direct financial costs for the Scottish Government. However, there are some concerns around the robustness of this assessment of costs and we consider that if it were to be enacted there is potential for greater resource implications generated by responding to legal challenges or taking other actions that might arise from incorporation of the Charter. For instance, at least once every five years, a report must be published on the steps Scottish Ministers have taken to safeguard and reinforce local self-government and increase the autonomy of local authorities. There will also be a need for staff and other resources to be allocated to undertake guidance or awareness-raising activity. As the Bill provides a basis on which action can be taken in the courts this should be noted and could potentially be costly. Therefore there is need for further analysis to be undertaken to ensure that all the financial implications are taken into account. This might be something the committee would wish to consider.

### **Scottish Government's Position**

11. It has been two years since the consultation on the draft Bill and since then much has changed. We have agreed with COSLA to develop a multi-year fiscal framework and although delayed due to the COVID-19 crisis, we are ready to reinvigorate and restart the second phase of the Local Governance Review (LGR) which we jointly launched with COSLA to ensure Scotland's diverse communities and different places have greater control and influence over decisions that affect them most. This demonstrates the Government is fully committed to subsidiarity and values the role of local government.

12. It is particularly important to note that the Scottish Government has invited all public service partners, not only Local Authorities, to propose alternative governance arrangements in different areas of Scotland, to reflect the particular characteristics of those areas and their communities (via the National Islands Plan, the Additional Powers Regulations and the LGR). The Bill must allow space for, and preferably support, these different arrangements to flourish even where it may result in variations in the extent of local government powers. Mr Wightman is aware of the review and Ministers' associated commitment to subsidiarity and local democracy. Our commitment to the joint LGR is unwavering and whilst some progress has been made the results of what more can be achieved is still in development.

13. There are a number of questions around the legal process, impact and consequences of the Bill which need to be carefully considered. COSLA themselves noted in their response to Mr Wightman's consultation that some provisions of the Charter are heavily qualified and much of the language is imprecise, meaning that they may need to be redrafted and made more prescriptive to give them greater effect and that more evidence and detailed analysis of how the provisions can be practical enforced is needed. The

Government share that view and the Committee may wish to explore this further as they consider the responses to their consultation and of course when they progress to evidence sessions with key stakeholders. In particular the committee may wish to explore what proposals COSLA intend to put forward to achieve the desired effect and ensure that the Bill is workable in practice.

## **Conclusion**

14. The European Charter of Local Self-Government (Scotland) Bill is a significant constitutional change which if incorporated brings the opportunity to ensure that a culture of partnership and participation is enshrined in Scots Law. There can be no doubt this Government is committed to subsidiarity and the role of local government in that regard. However, this Bill must not only give the principles of that partnership and participation it must also give the detail and prescription of how it can practically operate. We believe that more clarification on key aspects of the Bill is needed as well as more evidence and detailed analysis of how the provisions can be practically enforced, which will be challenging to conclude at this point in the parliamentary session.

Scottish Government  
25 September 2020

**Local Government and Communities Committee****31st Meeting 2020 (Session 5), Wednesday 2 December 2020****Post-Legislative Scrutiny of Parts 3 and 5 of the Community Empowerment (Scotland) Act 2015****Introduction**

1. This paper provides a short briefing on the Committee's [post-legislative scrutiny of Parts 3 and 5 of the Community Empowerment \(Scotland\) Act 2015](#).

**Background**

2. The Committee undertook a digital engagement exercise, using the [‘Your Priorities’ tool](#) over the period 15 November 2019 to 22 January 2020, to ascertain the views of the public on what they felt contributed to good community wellbeing. The Committee received over 220 ideas and suggestions from over 700 people from a wide range of backgrounds, ages and locations, all of which remain online. An analysis of the key themes raised during the exercise and a summary of related engagement events can be found [here](#).
3. A key theme to emerge was an appetite for people to have more involvement in, and influence over, services and amenities in their local area. The Committee decided to take this forward by carrying out post-legislative scrutiny of Parts 3 and 5 of the Community Empowerment (Scotland) Act 2016. These concern, respectively, participation requests and asset transfers (more details below). The Committee is considering how well these provisions have actually advanced community wellbeing.

**Community Empowerment (Scotland) Act 2015**

4. Five years have passed since the Scottish Government's flagship [Community Empowerment Act](#) received royal assent. The Act was intended to encourage and support community involvement and participation in public services and provide a legal framework that creates new rights for community bodies.
5. Part 3 deals with “participation requests” to enable engagement and dialogue between community participation bodies (such as community councils and community development trusts) and public service authorities (for example local authorities or health boards).
6. Community bodies can make a request to a “public service authority” to participate in a process to improve an outcome of a public service. The community body must explain what experience it has of the service and how it could contribute to its improvement, and the public body must agree to the request for dialogue unless there are reasonable grounds for refusal.
7. Part 5 of the Act sets out how a “community transfer body” can request to buy, lease, manage, occupy or use land or buildings belonging to a “relevant authority” (again, most likely a local authority), and how the authority is to deal with such requests.

Public authorities must transparently assess requests against a specified list of criteria laid out in the Act, and agree to the request unless there are reasonable grounds for refusal.

8. Parts 3 and 5 of the Act came into force three years ago and assessments of both parts were undertaken by Glasgow Caledonian University in April and July of 2020 respectively<sup>1</sup>. With sufficient time now having passed for reforms to have bedded-in, the Committee are exploring the effectiveness of these two parts through the lens of community wellbeing.

### **Evidence**

9. The Committee undertook some scene-setting evidence sessions in September 2020. On 9 September 2020, the Committee heard from the team from Glasgow Caledonian University who carried out the evaluation. It then heard from representatives from the [Development Trust Association Scotland](#) and the [Scottish Community Development Centre](#), two organisations with experience of assisting community groups seeking to use the powers in Parts 3 and 5.
10. Then, at its meeting on 16 September 2020, the Committee heard from a range of organisations representing and working with communities across Scotland - [Community Development Alliance Scotland](#), [Scottish Community Alliance](#), [Community Enterprise](#) and [Community Land Scotland](#).
11. Key themes to emerge from these evidence sessions were:
  - The legislation has been generally welcomed by those bodies who know about it, but implementation has been patchy.
  - Legislation requires public bodies to publish annual reports on participation requests and asset transfer activity, but levels of publishing have been low.
  - It is therefore difficult to ascertain how widespread knowledge of the provisions are and whether it has narrowed or widened inequality between communities.
  - Some have called for an appeals process to be available to bodies which have had their participation requests refused.
  - The asset transfers process can be long and difficult meaning momentum is lost and partnerships not made.
  - Some public bodies had ignored participation requests and asset transfer requests submitted by communities.
  - Capacity and confidence building are required within some communities, with mentoring offering some benefits.
  - Local authorities often mention budget constraints as a barrier to more meaningful engagement with communities.
  - Asset ownership is not the only way to empower communities – leasing options exist, not just ownership.

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<sup>1</sup> [Participation Requests: Evaluation of Part 3 of the Community Empowerment \(Scotland\) Act 2015 and Community Empowerment \(Scotland\) Act 2015: asset transfer requests - evaluation](#)

- The most empowered communities are often those with time, expertise and contacts. However, it is too early to say that only middle-class communities have benefitted from the Act.
- It can be difficult to get significant numbers of the community involved in local decision making, which can result in community empowerment being driven by a few key individuals.

12. Members of the Committee took part in an online community meeting on November 11 hosted by [Midlothian Voluntary Action Group](#), Participants, which included a number of community organisations, discussed asset transfers and participation requests. A summary of breakout discussions held during the meeting are attached at Annexe A.

13. The Committee issued surveys to community organisations and public bodies about their experiences of asset transfers and participation requests over October. Summaries of responses are available [here \(public bodies\)](#) and [here \(community organisations\)](#).

14. At its meeting on 2 December 2020, the Committee will take evidence from three community organisations which participated in the Committee's survey, to explore some of the issues they raised further: Community Out West Trust, Crammond and Barnton Community Council and F.R.I.E.N.D.S. (Stevenston Conservation).

### **Next Steps**

15. The Committee will take evidence from a number of public bodies who responded to the survey on 9 December. Subsequently, the Committee intends to hold concluding evidence sessions with COSLA and the Scottish Government, before reporting its findings to the Parliament in the New Year.

**Breakout session Participation Requests– Facilitated by Alexander Stewart MSP**

In attendance:

Sheila Yuill, Friends of Bellahouston Park  
Ewart McAuslane, Tillicoultry, Coalsnaughton & Devonside CC  
Phil Mills Bishop, ex Stonehaven CC  
Norman McLean, Fort Seafield and Wallacetown Community Council  
Stewart Roxburgh, Craigton Community Council  
Lesley Compston, KLAS Care C.i.C Child care manager/Director

***What is “community empowerment” and how can it be measured?***

It is the ability of a group of people to make an impact. Empowerment can be measured by assessing the extent to which a community’s desired outcomes are met. This definition was agreed by all participants.

***General views on participation requests (PRs)***

There was agreement that not enough PRs have been submitted across Scotland, despite there being a clear need for more community involvement in local decisions. For example, it is said that there has only been one PR submitted in the whole of Aberdeenshire since 2017.

This would imply that there are obviously barriers preventing or discouraging more PRs from being submitted.

There is a belief that council officials see PRs as a threat.

Much more publicity and awareness is required – for example, clear information and guidance should be included on council websites, prominently displayed.

***Experiences of PRs***

Participants voiced frustration at the PR process. The feeling is that local authority officials are unwilling to relinquish control and decision-making power to communities and “ordinary people”.

Quite often this manifests itself in a complete lack of engagement from councils. The group insisted that for community empowerment to be successful, participation and commitment from *both* sides is required.

One participant said that Glasgow City Council had actively discouraged his community from submitting a PR, although they did eventually grant the request. Nevertheless, the council did not agree to everything within that request.

If councils do engage, then their behaviour often appears “tokenistic” or “patronising”. This is mainly from council officials, although there was agreement that elected councillors are often no better.

One participant found it useful to study previous PR requests, to understand which ones were successful and why.

Meetings with council staff prior to PRs being submitted can often be characterised by resistance and efforts to dissuade communities from progressing. One community council chair said “the first reaction from local authorities was shock-horror, and their tactics from then on was to try to put people off”.

There were also reports of applications taking far too long to process, with council decisions taking months, and with the current Covid crisis, years, with very little communication from local authorities.

### ***No appeals process for rejected PRs***

This was a major issue for participants who felt that there should be an appeal process open to communities should their PR be rejected. It was felt that any appeal should be conducted by an authority out with the local area, so it can be assessed objectively.

### ***General views on the Community Empowerment Act legislation***

There was some agreement that the legislation itself is potentially useful, however how it is being delivered on the ground is not good. With resistance and opposition from council officials, a change in culture is required.

There is a strong belief that each local authority, indeed each relevant public body, should have someone in a senior position who takes responsibility for community empowerment.

Finally, much more publicity and awareness is required – many community organisations are unaware of their rights and what can be achieved through PRs.

## **Breakout session – Facilitated by Sarah Boyack MSP**

In attendance:

Mark Han-Johnston, Self Directed Support Scotland  
Angela Anderson, St Andrews Community Council  
Penelope Fraser, St Andrews out of hours group  
Elspeth Critchley, Scottish Borders Self Directed Support Forum  
Tom Kinnaird, Benarty Community Council & Forum  
Sarah Tolley, Transition Edinburgh  
Joe Ochei, CBM Community Council

Notes: Kate Smith, Scottish Parliament staff

### **General introductions and experiences of being involved in PR's**

**CBM Community Council** – working with our local community on community activities, community planning, seeing how it all fits in with the local community, integrating the community to look after each other

**Benarty CC** – includes 4 ex - mining villages in an area of high deprivation. Working to advance the community. Good community spirit, traditional values, mainly white and working class, low income, negative experiences of being involved in PR's with two attempts turned down.

Experience of local authority who gave a good presentation which was very promising. Well attended and lots of optimism. Wider community lacked confidence and had trepidation that Fife Council would relinquish control. Majority feeling in the local community that it could do better at running a particular asset (local park). It is our local park and we have no other. It is held dearly by local community. Council Officer explained the process. Two PR's submitted one for the Fife regional park, refused and one for the country park. Both were refused by Fife council for the reason that they were not the controlling authority and they could not tell us who was.

**St Andrews CC and St Andrews Out of Hours Service** – single issue to retain the out of hours service and major injuries unit in NE Fife. Joined together with majority of CC's in NE Fife to launch a PR alongside St Andrew's University students. PR agreed but issues with how it has been carried forward. Found process extremely challenging and are now working with SG to improve the process.

It would have been helpful to have representatives from community and frontline staff who should be involved at the start at impact assessment process. Workshops in 206/2017 no medics present. A flawed options appraisal process. No proper consultation with the people of NE Fife. Hiccup with PR process which held us back. Fife council said PR should be dealt with by NHS, who said it should be dealt with by the Integrated Joint Board. The IJB said only Fife Council could deal with it. It was difficult to get information from the NHS & IJB about PR requests.

Local authority did not have information was easily available. Eventually PR accepted but it has not transpired as was agreed. It was raised that IJBs and H&SC Partnerships were not listed as public bodies.

**Self Directed Support Forum** – single issue. Sought a proper consultation from the local authority on social care legislation and how support is denied in Scotland. Seeking choice and control over individual self-directed support. PR agreed but not yet in place. Sought to influence outcome improvement process.

Local authority had clear information on the website, but the process is not widely known. The process was daunting and has been put on hold due to Covid.

**Transition Edinburgh** – interested in hearing other's experiences and how to get involved in decision making.

**SDS Scotland** – supporting groups across Scotland and promoting PR process to be used by organisations to get involved in local decision making. For example in Shetland an arts organisation, could go straight to PR but advised to go to organisation and appeal to be involved in effective discussion about local issues. Mostly working in a health and social care context.

Experience of many groups submitting PR's that are well thought through, with clear outcomes and aim. Local authorities struggle to respond appropriately. Organisations had to write 2 or 3 times to get an acknowledgement for the request. In one case had to write to the Chief Social Work Officer to get a proper response. Issues with responses, timescales and understanding. For example, with Local Officers not understating the role of an EQIA and how the request relates to the Community Empowerment Act. This is echoed around the country. We still see Community Councils who do not know about PR's and AT's. We need to highlight this.

### ***General views on participation requests (PRs)***

There was a mix of experiences. Some people had found the information initially available, the process daunting. Some found the whole process extremely challenging with major flaws. Some had been successful but not been able to progress due to Covid or the subsequent involvement was not as promised. Others had been refused and had not been provided with a full reason for refusal.

Issues included: lack of awareness in the community and in organisations of PR's, difference between PR's and AT's; lack of awareness and understanding of Local Authority Officers; differences between local authorities in promotion and access to PR's. Some local authority websites are good and others have nothing; different PR forms used by public bodies in the same region – (Fife Council and Fife NHS use different forms); request barred because it was sent on the wrong form. Local authority not listening to the community and steamroller decisions through.

### ***Appeals process for rejected PRs***

All participants agreed there should be an Appeals process and that this should be managed by an independent board. It should be open and transparent. An independent person to oversee this process, for example from a different region.

### ***General views on the Community Empowerment Act legislation***

There was agreement that the legislation itself is very useful, however how it is being delivered on the ground is not good. There is also a lack of awareness and understanding in the general public and in community councils, Some people talked of the lack of confidence in communities in submitting a PR and trepidation that local authorities would relinquish control. This was a job for some groups to get there community on board (in submitting a PR). Unfortunately, in some cases this had proved to be correct.

### **Recommendations for improvement**

- Training for public bodies and local authorities in the legislation
- Culture change – getting public organisations to welcome input from the community and to act on what they hear.
- Training for Local Authority Officers
- Public authorities should be held to account in responding to the legislation.
- An independent board to assess PR's
- Elected members, delegated powers to council officials
- An Appeals process
- Public awareness campaign, rights, and processes
- Awareness raising of the difference between AT's and PR's and of PR in general
- Advertising
- Consistency in forms
- Transparency in decision making

**Community Empowerment Act  
Community Meeting hosted by Volunteer Midlothian  
Wednesday 11 November - 6.30pm to 8pm**

**Breakout Room 3 - Asset Transfers facilitated by James Dornan MSP**

Nick Grant	Scottish Trust for Underwater Archaeology
Ross McKemmie	Barrhead Men's Shed
Eugenie Aroutcheff	Growing our community
Sarah Kennedy	Kilmallie Community Centre
George Gammack	Carnoustie and Monifieth Men's Shed
David Jerdan	Crail Community Council
John McIntyre	Ferguslie Community Council
Michael Bennet	Mill of Benholm
Lesley Kelly	Midlothian Voluntary Action

***What has been the main issues with Asset Transfers?***

All participants cited their local authority (LA) as the signal most significant stumbling block whilst processing their asset transfer (AT).

The following issues were repeated throughout:

- Participants in the group reported their LA's have little or no knowledge of the correct procedures;
- Very long process. One AT took 4 years, and another was still a long way off after 2 years from submitting their paperwork;
- AT requests seem to cut across several departments – Estates, Legal, Property - with reports that there is no continuity between the departments thus slowing the process down (ie the left hand isn't talking to the right hand);
- Legal wrangling and lots of red tape;
- LAs asking for community groups to have sufficient funding in place before they will consider the AT. This is difficult (almost a chicken and egg scenario) as the group require the asset as a means to generate funding (may it be from Scottish Government or other sources).

One participant reported a LA Councillor had ignored the request and won't issue the validation certificate as a means to simply stop the process. In a similar vein, another group reported having a good relationship with their LA but their AT didn't even make it past the Councillor as they 'just don't want it'.

Two participants offered to help their respective LA understand the process of transferring assets given their experience. Both requests were ignored.

One LA didn't even know that they owned the land that was subject to a AT.

One participant had 25/30 years of dealing with their LA and gained a great knowledge of the process but reported, like others, the process is difficult to understand and the 'common person' would struggle with the paperwork. They expressed frustration that charities with a larger staff resources were obtaining properties with much more ease. Community groups were missing out on their opportunities simply because the process is difficult to navigate through. They had experience of, and suggested to the group, to ask the LA for a lease rather than a AT. This way the LA keeps some control of the ass. They also reported that LA's may be hesitant to transfer an asset over in fear the community group run into financial difficulties thus a lease may be a better option for both parties.

There was frustration over asset where an LA can't afford it's upkeep but due to their lack of understanding of ATs the community group are not able to take it over.

***We asked if there were any good news stories or hints to share?***

One participant shared their view that, when dealing with a LA, the Estate Department isn't quite the best fit to deal with the request.

One participant suggested talking to [Office of the Scottish Charity Regulator](#) (OSCR) who had proven to be of assistance to them in the past.

One LA has went as far as creating their own AT Team. Unfortunately, the participant reported they only met with this team once then didn't hear back.

***Conclusion***

The group agreed that a timetable or timeline should be in place to stop the AT process spinning on and on.

James Dornan MSP suggested a senior staff member in LA's should be appointed to AT to help decision making process.

## **Breakout session – Facilitated by Gail Ross MSP and Rebecca McKinney of Midlothian Voluntary Action (MVA)**

In attendance:

Terence Anthony	Tramways Community Garden
James Mcclung	Old Luce Development Trust
David Genney	Strathpeffer Residents' Association
Mary Peart	Community Out West Trust
Professor Cliff Beevers	Pentlands Community Space
Esther Clark	Ayr Development Trust
Dawn Black	Stonehaven & District CC
Dennis Gowans	Crail Community Partnership
Graham Marshall	Greener Hawick

### **Experience of asset transfers and progress**

Participants had a mixed experience of the asset transfer process and how it had worked for them and were at different stages in their progress.

For example, one attendee was part of a community body which was trying to transform part of a town square into a civic space. It was currently being used as a car park, bin receptacle and cycle storage. They had put together a plan and had confirmed funding and had been in discussions with various council departments about putting things in motion. After realising that it contained disabled parking spaces which would lose the council income if lost, they were told that they may need to do an asset transfer to take on the land and perhaps take on a lease and liability insurance, as it would no longer fall under the Council's responsibility if the disabled spaces were moved.

Another was part of a community group which had been trying to asset transfer local toilets into community use, so they could turn them into a community hub. They were just making a bid to the Council, which had been accepted. Their asset transfer had been pretty smooth, and now they just had to find the funding to renovate the building. It will have a community space downstairs and a flat upstairs. They were raising the money locally and through charities, but that was proving a bit more difficult given the current circumstances.

One participant was part of a group trying to purchase a local bowling club which recently went under. They wanted to turn the area into a community garden. The ground was owned by an ALEO, which in turn was owned by their local council. The group had agreed to take over the lease of the bowling club and when the ALEO had been made aware of this, they terminated the lease and put the land up for sale. They were advised by the DTA to put in an asset transfer if it could be determined that the

ALEO were a public body under the act. The application was denied and the ALEO continued with their attempts to sell the land. The land had been in their ownership for over 100 years and largely ignored until their organisation showed an interest in taking over the land. They had appealed to the Council and Scottish Government regarding their situation, but they would not get involved. The ALEO did not own the building itself, just the land. It is unclear who owns the building.

Another participant was a representative of his resident association, which was in the process of purchasing some greenspace in their village to develop a community park.

We heard from the representative of community partnership which was in the process of four asset transfers from the Council, a community hall, which they believed they could make better use of and 3 pockets of land to supplement their greenspaces, one of which being a wildlife reserve. The process for them in relation to their asset transfer had been smooth and accepted, and now they were in the process of locating funding.

Another individual was part of a development trust which was undertaking a number of avenues to reinvigorate their town centre by purchasing land and buildings through asset transfer and community right to buy. Whilst they had completed the right to buy process fairly swiftly, they were having difficulties with the asset transfer and were not having a very positive reaction from their local authority.

One attendee's group had just completed an asset transfer of two pieces of land from their local authority, one was a disused car and lorry park, the other a 4 unit industrial estate, with income to the council, and the surrounding land. They found their council to be obstructive in their approach in trying to deny the asset transfer. Both need significant work done on them – the industrial estate in particular has had no revenue spent on it in the last 20 years. They fortunately have some windfarm funding to undertake some renovation work.

Another representative was part of a trust had been set up to takeover some public toilets which had been closed by the council. They currently had them on a lease at and had just completed an asset transfer, but the process had been slowed by covid. Apart from that, they had found the process to be quite smooth and were now just waiting on a decision on repurposing the area to retain the toilets and also to provide some campervan facilities.

One organisation represented was trying to put in an asset transfer for some trees which were to be taken out as part of a flood protection scheme. They were told by their local authority that this could not be done, but they later found out that this was wrong. They had also spoken to their local authority about taking on area of landfill to be used as a composting site, but were again not granted the land as it was leased, but the group since found they could have taken over the lease. They gave two

specific instructions to senior officers in the council 2 years ago and still nothing has been done. They found their council to be obstructive. Their view was that if the local authority did not originate an idea, then it is not going to happen. In their view, the local authority saw every asset as supporting borrowing, so were reluctant to let them go. They said that the council were acting as a block on development as they were falsely inflating the value of a piece of land which no one will look at. In their area, two properties had been transferred under asset transfer, but the rest have been leased, showing a low take-up of the policy.

### **Views on good aspects of community empowerment, the Act and barriers faced**

Most agreed that good community empowerment meant the whole community having a say over local services and decisions about issues that relate to their area.

One representative felt that good community empowerment is taking responsibility of development in your area and getting up and making your own future. Local communities know what their needs are and what their community needs. They lived in a smaller island community and therefore had found it relatively easy to find the numbers in support required to get their project to renovate disused toilets off the ground. Before the legislation, they had found that community spirit in their area was dwindling slightly, but actions taken they had taken were making it return and they were seeing the return of their local fete for the first time in years.

Another highlighted that their successful asset transfer had empowered the community as people with different skills, e.g. lawyers, builders and IT experts had all said that they will come forward to help out the community or at a lesser fee.

There was general agreement that the spirit of the legislation was excellent and that it had opened doors for community organisations to be empowered.

One organisation, for example, had used the act to positive effect to purchase a piece of greenspace which is a short cut to a development of 320 homes that's supposed to happen. Initially in the developer's plan, the development was meant to be built right up to the road, but the buyout of this piece of land means that they would not have the development run through a community that has been solid for several years, or the associated traffic. They have found their communities leader at the Council to be very helpful and they feel that adhering to the legislation's framework and timetable helped them to a positive outcome.

Other positive parts of the act highlighted were the ability to co-opt experts on to community groups with certain skills and experience, which could help through relatively complicated parts of the act or applications.

It was highlighted that in order for the asset transfer to work, you could not just make a request just because you wanted to take on the asset you had to have a plan in place and funding in order to make it successful.

We also heard, however, that there are many financial, practical and bureaucratic barriers that stands between a group and their goal over taking over an asset, that it can sometimes feel like a very disempowering process. MVA have tried to work with the council to make sure that their own procedures for dealing with asset transfers are as smooth and as efficient as possible and their engagement with the third sector is open and clear. They were trying to make it an empowering experience.

Some felt that the Act was complicated, particularly if you want to undertake many different aspects of the act and other related policies. Some said therefore that better guidance was required and the need for a “blow by blow” account for the everyman on how to step through the act and get through the bureaucracy.

People dealing with requests often only knew about one or certain aspects of the Act, which can make things difficult. This highlighted a need for a more joined up approach to administration. For example, one organisation represented had had a great response from their council’s asset transfer team but had hit hurdles when it came to dealing with the planning department which had treated their request like they would a commercial organisation and they had also found the legal team unhelpful.

This was also a particular problem in larger local authority areas, where centralised departments would have little awareness of the importance of community requirements in smaller rural parts of their council area. This was often where hurdles were apparent.

There was a sense that there was a lack of awareness and a problem getting some councils to recognise the importance of the Community Empowerment Act, with some being closed to it. There was a mixed picture and as mentioned previously, some felt that their Council was being purposefully obstructive in order to avoid asset transfers, which is out with the spirit of the Act. In order for it to be successful the council needs to be cooperative and act with the organisation looking to take on an asset. Some found the council to be uncooperative if it felt that the asset in question was of any value, but this problem was not encountered if the opposite was the case.

It was noted that good community empowerment required engagement from the whole community, but often enough it is only a small part of the community that was engaged in a particular aspect. It was highlighted that it was important that community organisations do things that are representative of the whole community and not the small few who are engaged.

A bureaucratic part of the act that was highlighted as a problem for larger areas was the requirement to have large ballots or proven signatures in order for requests to be considered. One representative said that in order to do a section 3A request, they were required to have a ballot with 50 per cent turnout. They said that there is only just over 50 per cent turnout for their local elections and therefore it was exceptionally difficult for a small community organisation to have the resource in order to meet this requirement. Most agreed that this was far easier for a small island organisation to meet this requirement and called for this aspect to be changed. They will need to set up a smaller organisation that has a small enough part of the community so that they can manage the bureaucratic bits of the act.

In relation to defining the bodies that should be subject to the Act one organisation felt that it was set up back to front and should have been done the other way around e.g. rather than defining what a relevant authority is from the outset, the Act should recognise that any piece of land which is owned by a public body should be subject to the Act and with good reason, a community should be able to bid for any piece of that land. They said, however, if a piece of land is owned by ALEO, a publicly owned company, they can decline to an asset transfer request as they are not set out in the Act as a relevant body.

## Local Government and Communities Committee

31st Meeting, 2020 (Session 5), Wednesday 2 December 2020

### Subordinate Legislation

#### Overview of instrument

1. The following instrument, subject to negative procedure, is being considered at today's meeting:

#### **Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No. 2) Order 2020 (SSI 2020/366)**

#### Background

2. The Explanatory Note explains that this Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. Article 2 amends Class 72C. This Class was inserted by the Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020. Class 72C allows local authorities and certain health service bodies to carry out development for the purposes of— a) preventing an emergency, b) reducing, controlling or mitigating the effects of an emergency, or c) taking other action in connection with an emergency. For these purposes, an emergency is an event or situation which threatens serious damage to human welfare in a place in the United Kingdom.
3. The development permitted is subject to conditions which are set out in paragraph (3) of Class 72C. These conditions currently include a requirement that any use of the land for the purposes of Class 72C ceases on or before 31 December 2020. This Order amends that condition so that the requirement will be that any use of the land for the purposes of Class 72C ceases on or before 1 July 2021.
4. Further detail and the policy objectives of the Order are set out in the policy note attached at **Annexe A**.
5. The instrument was laid before the parliament on 12 November 2020 and comes into force on 30 December 2020. It is subject to the negative procedure.
6. An electronic copy of the instrument is available at:  
<https://www.legislation.gov.uk/ssi/2020/366/introduction/made>
7. No motion to annul this instrument has been lodged.

#### Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee (DPLRC) considered the instrument at its meeting on [24 November 2020](#) and [determined that](#) it did not

need to draw the attention of the Parliament to the instrument on any grounds within its remit.

### **Committee Consideration**

9. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 21 December 2020.

### **Procedure**

10. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
11. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
12. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
13. Each negative instrument appears on the Local Government and Communities Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

**POLICY NOTE****THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (CORONAVIRUS) (SCOTLAND) AMENDMENT (NO. 2) ORDER 2020****SSI 2020/366**

The above instrument was made in exercise of the powers conferred by sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997, and all other powers enabling them to do so. The instrument is subject to negative procedure.

**Purpose of the instrument.**

The Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (“the GPDO”). The GPDO is a general development order granting planning permission for certain classes of development. The Order amends the GPDO to extend the period during which planning permission is granted for certain development carried out by, or on behalf of local authorities or health service bodies for the purposes of preventing, reducing, mitigating or controlling the effects of the current emergency caused by the spread of the COVID 19 virus (the virus) and its impacts on public health

**Policy Objectives**

Planning permission is ordinarily required for new development in order to ensure that the development is appropriate, in terms of Development Plan policy and the protection of amenity, and sustainable. Permitted development rights, as set out by the GPDO, are intended to allow developments which have minimal impact on amenity and Development Plan policy to proceed without the delay which is involved in submitting a planning application. Planning authorities have a target of two months to determine a planning application; once an application is submitted the applicant has to wait until the application is determined before starting work. The removal of this period from the development process will enable the health authorities and local authorities to react to the virus more quickly.

As the developments which are required specifically to deal with the effects of the virus on public health will be in place for a temporary period only extending permitted development rights to cover such developments will not have a lasting impact on amenity.

**Consultation**

As this is an emergency measure, and intended to be temporary, no formal public consultation has been undertaken.

### **Impact Assessments**

We have carried out a Business and Regulatory Impact Assessment. The Equalities Impact Assessment (EQIA) in relation to The Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020 remains relevant and identified no negative impacts and minor benefits for some sectors of the community, We also screened out at stage one of Children's Rights and Welfare Impact Assessment (CRWIA), as the changes are technical and temporary changes driven by the public health policy. Similarly, we have screened out of the Fairer Scotland Duty Assessment, as the changes are temporary and technical rather than strategic.

These Regulations fall out with the scope of Strategic Environmental Assessment as per Section 4(3)(a) as their sole purpose is to serve a civil emergency. A Data Protection Impact Assessment is not considered relevant to the changes. In the circumstances, we have not done an Islands Impact Assessment, though we acknowledge that more remote areas with more limited online capabilities may be at something of a disadvantage for this temporary period.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. There will be no financial costs imposed on health authorities or local authorities as a result of the amendment. Indeed, there will be a cost saving as they will be spared the costs of preparing and submitting a planning application. The planning authority will not receive a fee for a planning application as they otherwise would, but will not incur the staff time and other costs of determining an application.

Scottish Government  
Directorate for Local Government and Communities

November 2020