



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

MEETING DETAILS

32nd Meeting, 2020 (Session 5)

Wednesday 9 December 2020

Virtual meeting

Meeting starts at **09.45 am. (09.15 am sign on)**

ADDITIONAL INFORMATION

Previous Meetings

[Previous meeting papers and Official Reports](#)

Wednesday 16 December

- 1 negative SSI
- 2 Affirmative SSI's
- Common Frameworks – evidence session with Scottish Government
- Evidence session with COSLA TBC

Wednesday 23 December

- Fair Rents Bill
SPICe analysis of responses; consideration of next steps
- Fairgrounds Bill
SPICe analysis of responses; consideration of next steps (all tbc)

COMMITTEE PAPERS

Agenda

Community Empowerment –

Clerks paper

SPICe Questions paper (PRIVATE)

EU Charter Bill – Clerks paper

SPICe Questions paper (PRIVATE)

Work programme (PRIVATE)

Members Bulletin (PRIVATE)

NOTICES

Pre-Brief

Please sign on at **09.15** to assist broadcasting with system checks.

Meeting Timings

- Item 1: 09.45
- Item 2: 09.45 - 10.55 am
- Item 3: 11.00 - 12.00 noon
- Item 4: 12.00 - 12.10 pm
- Item 5: 12.10 - 12.20 pm
- Item 6: 12.20 - 12.50 pm



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

32nd Meeting, 2020 (Session 5)

Wednesday 9 December 2020

The Committee will meet at 9.45 am in virtual meeting.

1. **Decision on taking business in private:** The Committee will decide whether to take items 4, 5 and 6 in private.
2. **Community Wellbeing – Post-Legislative Scrutiny of the Community Empowerment (Scotland) Act 2015, parts 3 and 5:** The Committee will take evidence from—

John Mair, Director of Estate Development, Forestry and Land Scotland;

Lesley Forsyth, Senior Manager, North Ayrshire Council;

Elisabeth Manson, Community Planning and Engagement Manager, Dumfries and Galloway Council.
3. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Andy Wightman, Member in charge of the Bill, Scottish Green Party;

Neil Ross, Solicitor, Office of the Solicitor to the Scottish Parliament, Andrew Mylne, Head of Non-Government Bills Unit, and Vanda Knowles, Senior Assistant Clerk, SPCB.
4. **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.
5. **European Charter of Local Self-Government (Incorporation) (Scotland) Bill:** The Committee will consider the evidence heard earlier in the meeting.
6. **Work programme:** The Committee will consider its work programme.

LGC/S5/20/32/A

Peter McGrath
Clerk to the Local Government and Communities Committee
Room T3.40
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

Agenda item 2

Note by Clerk

LGC/S5/20/32/1

PRIVATE PAPER

LGC/S5/20/32/2
(P)

Agenda item 3

Note by the Clerk

LGC/S5/20/32/3

PRIVATE PAPER

LGC/S5/20/32/4
(P)

Agenda item 6

PRIVATE PAPER

LGC/S5/20/32/5
(P)

Local Government and Communities Committee**32nd Meeting 2020 (Session 5), Wednesday 9 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 respectively¹. 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.

¹ [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 available [here \(Participation Requests 1\)](#), [here \(Participation Requests 2\)](#), [here \(Asset Transfers 1\)](#) and [here \(Asset Transfers 2\)](#).

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 took 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).

15. At its meeting on 9 December 2020, the Committee will take evidence from a number of public bodies who responded to the survey: Forestry and Land Scotland, North Ayrshire Council and Dumfries and Galloway Council.

Next Steps

16. 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.

Local Government and Communities Committee

32nd Meeting, 2020 (Session 5), Wednesday 9 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 closing Stage 1 evidence session with Andy Wightman. 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 Charter directly enforceable in Scots law and to require the Scottish Government to act in a way that agrees with the Charter. 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 in 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 representatives of local government, academic experts and a think-tank. A link to the [papers is here](#) and to the [official report here](#). On 2 December, the Committee explored the Scottish Government’s views on the Bill: including its cost, how it would affect the relationship between local and central government, and amendments to strengthen the bill. A link to the [papers is here](#) and to the [official report here](#).
7. The 9 December meeting with Andy Wightman is a chance for him to set out a final case for the Bill at Stage 1, to explain what positive impact he expects it to have, and respond to points raised in other evidence so far. The Committee will discuss this evidence later in the meeting and is expected to 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.