

**FALKIRK COUNCIL**

**Subject: COMMUNITY EMPOWERMENT (SCOTLAND) ACT**  
**Meeting: EXECUTIVE**  
**Date: 18 AUGUST 2015**  
**Author: DIRECTOR OF CORPORATE & HOUSING SERVICES**

**1. INTRODUCTION AND BACKGROUND**

- 1.1 This report outlines the content of the Community Empowerment (Scotland) Act 2015 and where this will impact on the Council and its communities. The report also notes some of the actions the Council needs to consider in order to be able to respond to elements of the Act as evaluated on 28<sup>th</sup> July 2015.
- 1.2 The Community Empowerment (Scotland) Act 2015 was passed by the Scottish Government on 17<sup>th</sup> June 2015. In most cases secondary legislation and guidance have to be developed before the legislation can come into full effect. It is expected that most parts of the legislation will come into being within the next year. However, given the range of topics and issues covered by the Act this timescale could be delayed.
- 1.3 The Act was drafted in response to recommendations in the Christie Commission Report that highlighted one of the best ways to improve well-being and tackle deprivation was to involve people and communities in decisions that affect them. Overall the Act hopes to empower communities through the ownership and control of land and buildings and by strengthening their voices in decisions about public services. Members were briefed during the consultation period on the Act; however since then there have been a number of significant amendments.
- 1.4 The Community Empowerment (Scotland) Act 2015 is a wide ranging piece of legislation designed to further devolve power from local and national government to local communities. There are 11 topics covered by the Act:
  - National Outcomes;
  - Community Planning;
  - Participation Requests;
  - Community Right to Buy;
  - Asset Transfer Functions;
  - Delegation of Forestry Commission Functions;
  - Supporter Involvement in Football Clubs;
  - Common Good, Allotments;
  - Participation in Public Decision Making including Participatory Budgeting and
  - Non Domestic Rates.

A summary of each of part of the Act along with the implications for the Council, as currently understood, is set out in this report. A link to the Act as passed is provided [here](#).

## **2. NATIONAL OUTCOMES**

- 2.1 The Act sets out a statutory requirement for Scottish Ministers to set national outcomes for Scotland. The Act states that Scottish Ministers must consult on, develop and publish this set of national outcomes. They must also publicly report on progress towards these outcomes and review them at least every five years tying in with the Scottish Government elections. Public authorities and other persons or organisations that carry out public functions must have regard for the national outcomes in carrying out their devolved powers. Scottish Ministers must also consult with communities, which includes any community based bodies, on common interest, identity or geography.
- 2.2 In determining the national outcomes, Scottish Ministers must have regard to the reduction of inequalities of outcome which result from socio-economic disadvantage. The national outcomes can be reviewed at any time subject to an appropriate consultation process.

### *Implications for the Council*

- 2.3 At the moment the Scottish Government has a set of national outcomes that are used to inform local outcomes. We expect the national outcomes to remain the same until the next Scottish election when they will be reviewed. Members will be aware that the national outcomes have informed our local outcomes in the review of the Strategic Community Plan.

## **3. COMMUNITY PLANNING**

- 3.1 The Act requires that Community Planning must be carried out by local authorities and a number of individuals and organisations. Local authorities and the persons listed in the Act have to work with each other and community bodies to improve outcomes delivered by public services. This is a change from existing requirements, where a local authority has to support and lead Community Planning Partnerships, to local authorities being an equal partner with other relevant organisations.
- 3.2 Community Planning Partnerships (CPPs) will also be required to consider which organisations are likely to be able to contribute to Community Planning. They will have to have particular regard to community bodies or organisations which can represent people experiencing poverty. They will have to make all reasonable efforts to secure the participation of those community bodies in Community Planning and to take reasonable steps to enable the community body to take part.
- 3.3 Community bodies are defined as groups of residents that come together and are established for any purpose in the area of the Community Planning Partnership. The group can reflect communities of interest as well as geographic communities.
- 3.4 The Act requires that a Community Planning Partnership must act with a view to reducing inequalities of outcome which result from socio-economic disadvantage unless the partnership decides that it would be inappropriate to do so.

- 3.5 Each Community Planning partnership must prepare and publish a local outcomes improvement plan. This plan must set out:
- Local outcomes, which are priorities set by the CPP with a view to improving those outcomes;
  - A description of the proposed improvement;
  - A timescale in which the improvement will be achieved; and
  - A description of the needs and circumstances of persons residing in the local area.
- 3.6 The Act notes that in preparing local outcomes a CPP must consult community bodies and people that it thinks are appropriate, and that the plan must be published. Before publication the CPP must take account of the representations made to it by individuals and community bodies and the needs and circumstances of people living in the local authority area.
- 3.7 CPPs will be required to review local outcomes to determine if progress is being made in improving the achievement of each local outcome and if necessary publish a revised plan. A CPP will also be required to prepare and publish a local outcomes improvement plan progress report each year setting out the CPPs assessment of whether there has been any improvement in the achievement of each outcome, the extent to which the CPP has participated with community bodies, and whether the participation has been effective in enabling the community bodies to participate in community planning.

#### *Locality Planning*

- 3.8 A late addition to the Act was the requirement that each CPP must, for the purposes of the comparing outcomes, divide the area of the local authority into smaller areas or localities. It is expected that further guidance on how local areas or localities are to be defined will be issued by Scottish Ministers.
- 3.9 The CPP will be required to identify each locality or part of locality where the people living there experience poorer outcomes as a result of socio-economic disadvantage. It is expected that guidance and regulations will be issued in due course about what is expected in relation to the above.
- 3.10 There is now a requirement that a locality plan must be published for each locality. This will set out specific local outcomes, a description of the proposed improvement and the timescale in which this will be achieved. Community bodies and local people must be consulted as appropriate. Again before publication the CPP must take account of representation received and the needs and circumstances of local people.
- 3.11 Locality plans must be kept under review and revised if necessary. An annual report of progress must also be published by the CPP.
- 3.12 Members will recall that the recent Scrutiny Panel on Participation and Engagement asked for a review of Local Community Planning. It is important that this review is informed by the terms of this Act and the recently issued guidance on locality planning for Health and Social Care Integration.

### *Governance*

- 3.13 The organisations required to facilitate Community Planning and take reasonable steps to ensure that the CPP carries out its functions effectively are:
- The Local Authority;
  - The Health Board;
  - Highland and Islands Enterprise;
  - The Chief Constable of the Police Service of Scotland;
  - The Scottish Fire and Rescue Service and
  - Scottish Enterprise
- 3.14 A CPP may decide that a local Community Planning partner may only be focussed on a particular local outcome, otherwise each Community Planning partner must co-operate with the other Community Planning partners to achieve all local outcomes.
- 3.15 Each Community Planning partner must contribute funds, staff and other resources, as the CPP considers appropriate, with a view to contributing to or achieving local outcomes and for the purpose of securing the involvement of community bodies.
- 3.16 Each partner must also provide information to the CPP in relation to achieving each local outcome and take account of local outcomes when carrying out its functions. It is expected that further guidance will be issues on this.
- 3.17 If a CPP wish to make an application to become a Corporate Body it can apply to Scottish Ministers to do so.

### *Implications for the Council*

- 3.18 This is a significant but welcome change in how the Community Planning Partnership works with our strategic partners and community bodies. It is expected that we take into account the needs of those people who are disadvantaged due to socio-economic reasons. Locality plans have to be published to allow for comparison between outcomes and there is a requirement to actively involve local communities and groups in the development of these plans. Importantly, the Council is now an equal partner in Community Planning with the other partners having to work with us to deliver local outcomes and contribute funds, staff and other resources as appropriate.

## **4. PARTICIPATION REQUESTS**

- 4.1 The Act sets out a mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. This could involve community bodies taking on the delivery of services. As part of this, a public services authority will have a duty to establish and maintain an outcome improvement process. It is expected that regulations and guidance will be issued in relation to this as it is not immediately clear which outcomes the outcome improvement processes refer to. However it would appear that potentially all outcomes or service improvements must have a clearly defined written process which details the point in time that particular community groups or bodies will be involved. This process extends from initial decision making to delivery and evaluation, including commissioning, where appropriate.

- 4.2 There is a very wide definition of what is meant by a community controlled body and a community participation body. There is a lengthy legal definition of a public service authority. It is clear that local authorities are public service authorities. Community participation bodies and community bodies can make a request to be involved in an outcome improvement process.
- 4.3 A participation request has to be made in writing by a community body that wants to take part in an outcome improvement process. It is expected that further guidance and regulations will be issued in relation to these processes including an appeals and a review process.
- 4.4 The Council and other public authorities must report on participation requests and the outcome improvement process. An annual report must be published in relation to the participation requests received. Scottish Ministers must also prepare a report on the operation of participation requests.

*Implications for the Council*

- 4.5 The Council will have to detail how outcomes or services will be improved. Guidance is expected but it might be anticipated that for each outcome the detailed process for improving this outcome will have to be established. This will not only detail what research or background work Services will undertake but also plans for community engagement, including which groups will be involved, when and why. Further work will be required to establish a process in relation to participation requests and also reporting on these requests on a yearly basis, once guidance has been provided.

## **5. COMMUNITY RIGHT TO BUY**

- 5.1 This section of the Act is fairly substantial and in the main contains amendments to the Land Reform (Scotland) Act 2003 and changes to the Crofting Community Right to buy, both of which have limited implications for Falkirk Council. The process by which a community might purchase land which is neglected or abandoned is set out in detail and includes information on determining the land's value, appealing to the Lands Tribunal, compensation to owners and grants available to community bodies to pay compensation. The type of land includes boarded up shops and houses or algae filled ponds.
- 5.2 The Keeper of the Registers of Scotland will be required to maintain a register known as the Register of Community Interests in Land. A community body (being a company limited by guarantee, Scottish Charitable Incorporated Organisation [SCIO] or community benefit society with not less than 20 members the majority of which should be members of the community) can make an application, with reasons given, to the Scottish Ministers to register an interest in land.
- 5.3 The Scottish Ministers will give notification to the Council which will then have 21 days within which to respond and provide comments. The Scottish Ministers can refuse or allow registration. If an interest is allowed to be registered, the Council cannot transfer the land concerned except in certain limited circumstances. Registration lasts five years and can be renewed upon application by the community body. There can be more than one registered interest over the same piece of land.

- 5.4 The right to buy is activated only when the owner i.e. the Council (or a creditor with right to call up, or other owner) gives notice that a transfer is proposed. Notification of the proposed transfer has to be given by the Council to the Scottish Ministers and the community body. Ministers must give notice to the community body within seven days of receipt of the Council's notification. The community body then has 30 days to respond with its intentions. The community body has to approve the purchase by carrying out a ballot of its members. If the community body wishes to purchase the land, the Scottish Ministers still need to approve the purchase and consider any change of circumstances since the original registration of the interest and whether the purchase is in the public interest. If there is more than one interest registered in the land, Scottish Ministers will decide which right prevails and which community body may purchase.
- 5.5 If the Scottish Ministers then approve a purchase, the community body has to make an offer to the Council or the relevant owner at an agreed value or, if there is no agreement on value, at a value determined by an appointed valuer. The date of entry is to be within six months of Scottish Ministers' consent to purchase.

*Implications for the Council*

- 5.6 The Council will need to ensure it can provide comments to the Scottish Ministers within the timescale given (21 days of notification by them) of its consideration of an application from a community body. This is a very short timescale and the responsible Portfolio Holder or department will have to be agreed quickly. The Council's Register of Land will have to be maintained to establish an up-to-date picture of what the Council owns. A process needs to be established to deal with any requests to purchase this land by a community and it is hoped that there might be some prior indication of the proposed application for registration before the 21 day period formally commences.

## **6. ASSET TRANSFER REQUESTS**

- 6.1 Under the terms of the Act, community bodies will have the right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish Public Bodies or Scottish Ministers. Organisations in this position will be called Community Transfer Bodies (CTB). The Act notes that there will be a presumption of agreement to requests unless there are reasonable grounds for refusal. A register will be required that contains details of land and assets registered to the local authority; this should be available for inspection at any time.
- 6.2 The Act sets out the process that should be followed in relation to making a request and the decision making process that a public authority should then follow. The appeals process is also detailed. Like much of the Act, additional guidance is expected to follow on this topic.
- 6.3 The Act notes that a body requesting an asset can be a company, charity and/or unincorporated group. A CTB should be controlled by the community and have more than 20 members. The application should include details of the land, reasons for transfer, the benefits of transfer and the price, rental, duration etc.

- 6.4 The Council then has to decide on the application, taking into account the reasons for the request, and other supporting information as well as potential benefits for economic development, regeneration, public health, social well-being and environmental well-being. The Act then requires the Council to agree to the transfer unless there are reasonable grounds for refusing.
- 6.5 Should the Council decide to agree to the request it should notify the CTB and specify the terms and conditions of the transfer including requirements for the CTB to submit an offer and the period within which that offer has to be submitted.
- 6.6 If the CTB wishes to challenge (a) a refusal of the transfer request (b) any of the terms and conditions imposed or (c) a failure of the Council to make a decision with the required period, then the Council must carry out a review of its decision or the relevant terms and conditions applied to that offer. The Scottish Ministers may prescribe the process for a review by regulations but in the absence of that, the Council should decide its own process. The review has to be by a Committee or Sub-Committee of the Council and not delegated to an officer.
- 6.7 Ultimately, the CTB can appeal to the Scottish Ministers if it does not agree with the decision following a review. The Council must establish and maintain a Register of Land. This is to be available to the public and placed on the website. The Council must also write an annual report on the number of requests it has received, those accepted and those refused.

*Implications for the Council:*

- 6.8 The Council will need to maintain a register of the assets it owns (including land and property). This process is currently underway. This has to be made public and updated as and when it changes. The Act sets out the requirement for the Council to establish a process to consider and take decisions on asset transfer requests. Decisions will have to be made on who will be involved, who will make the decision and who will issue the decision notice. Additionally, the Council will need to establish a Committee to deal with reviews and appeals against decisions made. Finally, an annual report will have to be produced, outlining all asset transfer requests made in the previous year.

## **7. DELEGATION OF FORESTRY COMMISSION FUNCTIONS**

- 7.1 This provision within the Act allows community bodies to be involved in forestry leasing. This will be available under a revised National Forest Land Scheme which will be published after Assets Transfer Request Provisions come into force. This will have limited impact in the Falkirk Council area. Members will be advised of the implications of this once known.

## **8. SUPPORTER INVOLVEMENT IN FOOTBALL CLUBS**

- 8.1 This section of the Act underpins the belief that supporters of football clubs should have more of a role in the decision making or ownership of their football clubs. This was a last minute addition to the Act and the Scottish Government will consult on guidance and recommendations in relation to this in the near future. Members are to be advised on any implications for the Council once known.

## **9. COMMON GOOD**

- 9.1 The Act places a statutory duty on local authorities to establish and maintain a register of all property held by them for the common good. It also requires local authorities to publish their proposals and consult community bodies before changing the use of common good assets.
- 9.2 The Council will be required to maintain a register of common good property. In advance of establishing the register, the Council must publish a list of property it proposes to include within the register. Specific notification is to be sent to Community Councils and community bodies (the latter being widely defined – any community body of which the Council is aware). This inclusion of additional assets can be queried by individual representatives where a body or a person believes them to be a common good asset.
- 9.3 The register, once established must be made available for inspection and placed on the Council website. If the Council wishes to dispose of or change the use of common good property, it must advertise that, notify the relevant bodies mentioned above and have regard the representations made. We anticipate that the Government will issue guidance to the Council on disposal, use and management of common good property.
- 9.4 The recently published Land Reform Act contains draft provisions in relation to Common Good as it relates to the ability of Councils to appropriate that land for another purpose.

### *Implications for the Council*

- 9.5 The Council does have a small list of Common Good assets maintained by Finance; however in order to make this definitive a significant piece of work would be required to identify and examine relevant title deeds from among the Council's several thousand separate titles, as well as investigating land identified as common good by parties submitting representations. An exercise of this nature would have significant resource implications.

## **10. ALLOTMENTS**

- 10.1 This section of the Act updates legislation on the provision and management of allotments. It requires local authorities to take reasonable steps to provide allotments if waiting lists exceed certain trigger points and strengthens the protection for allotments. Provisions allow allotments to be 250 square metres, a fair rent to be set and the non profit selling of surplus produce grown on an allotment.
- 10.2 The Act defines an allotment as land owned or leased by the Council, that is leased or intended for lease by a person from the Council and is used or intended to be used wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers.
- 10.3 Under the terms of the Act any person may make a request in writing to the Council to lease an allotment if they live in the Council area. A request may be made even if the Council does not own or lease any allotments. The Council must confirm receipt of such a request within 14 days of receipt.



- 10.4 The Council must establish and maintain a list of persons who make requests for allotments and keep this up-to-date. Reasonable steps are to be taken to ensure that the number of persons on the list is no more than one half of the total number of allotments owned and leased by the Council and that people should wait no more than 5 years for an allotment.
- 10.5 The Council must make regulations about allotment sites in the area. The first set of regulations are to be in place within 2 years of the provision in the legislation coming into force. This must cover things like allocation, rent, cultivation, maintenance, buildings that may be erected, livestock and Council landlord inspections. Consultation is required on the regulations with placement of an advert in at least one newspaper circulating in the area. The Act also requires the consent of the Scottish Ministers before disposing of an allotment site.
- 10.6 The Council must also prepare a food growing strategy for the area. This is to be published within 2 years of the relevant provision coming into force. This strategy should identify the land the Council considers may be used as allotments, identify other areas the community could use for cultivation and how the Council intends to increase the provision of allotments or such other areas of ground. This strategy is to be reviewed every five years.
- 10.7 The Council must also produce an annual allotments report as soon as possible after the end of each reporting year. This will set out the location and size of each allotment site, the number of allotments on each site, the period of lease, the rent payable, the number of persons on the list mentioned above, the steps taken by the Council to comply with the duty to take all reasonable steps to provide allotments to those on the list, the reasons for failure to comply with the duty, income received and so on.
- 10.8 The Act also allows for certain Council powers to be delegated to a person who represents the interest of all or a majority of the tenants of an allotment site upon request by that person, e.g. inspecting allotment sites. There is a set process for considering such a request. The Council is authorised to incur expenditure to promote its allotments and provide training to tenants.
- 10.9 The Act allows tenants of allotments to make a request, at least a month in advance, to the Council to use, free of charge, Council premises to hold a meeting of tenants about the allotment sites. The Council is required to respond to such a request within 14 days and may agree, refuse or offer alternative premises. The Council may terminate a lease of an allotment or allotment site upon notice where the tenant fails to comply with the terms of regulations to be made by the Scottish Ministers or where the Scottish Ministers have consented to disposal or change by the Council. Notice periods within the Act are given of 1 month for the former and 1 year for the latter. The Council is to allow a period for representations to be made by the tenant. The tenant may ultimately appeal to the Sheriff within 21 days of the notice.
- 10.10 There are provisions for compensation to be claimed by the tenant for termination under certain circumstances. Regulations on this are to follow. Compensation may also be claimed by the Council from the tenant where the allotment has deteriorated during the tenant's lease and the deterioration was caused by the tenant.

*Implications for the Council*

- 10.11 This section of the Act places significant obligations on the Council to provide allotment sites and administer them. The Council will need to develop clear processes for dealing with the provision of this Act. There will clearly be costs involved in this work in terms of dealing with requests as well as maintaining lists, preparing regulations, preparation of a food growing strategy and an annual allotment report.

**11. PARTICIPATION IN PUBLIC DECISION MAKING INCLUDING PARTICIPATORY BUDGETING**

- 11.1 The Act creates a new power that requires Scottish Public authorities including local authorities to promote and facilitate the participation of members of the public in its decisions and activities, including the allocation of resources. This supports the belief that involving local people in decisions that affect them builds community resilience and will also help the public sector identify local needs and priorities and target budgets more effectively.
- 11.2 This part of the Act also provides a new power to local authorities to create and fund their own localised business rates relief schemes, in addition to existing national rates relief, to better reflect local needs and support communities.

*Implications for the Council*

- 11.3 It is expected that further regulations and guidance on what is required of local authorities will be issued in the near future. In preparation for this it is proposed that officers look at various options for taking this forward. It is relatively easy to see the connections between locality planning and involving communities in making decisions about activities and budgets.

**12. SUMMARY AND RECOMMENDATIONS**

- 12.1 The Community Empowerment (Scotland) Act 2015 is very wide ranging and broad in its scope. However there are clear links between particular sections, i.e. the section on Community Planning, Participation Requests, and Participation in Decision Making. There are also clear links between Community Right to Buy, Asset Transfer Requests, Delegation of Forestry Commission Functions, and Supporter Involvement in Football Clubs, Common Good and Allotments. This legislation is principally about removing perceived barriers from people and communities with the aim of further devolving power from local and central government and allowing the community to become more involved in decisions that affect them.
- 12.2 The Act also places greater administration and reporting requirements on local government and other public bodies. This will have resource requirements which at this time cannot be quantified. Actively involving people in planning and decision processes is resource intensive but there is no acknowledgement of this within the Act.
- 12.3 It is clear that further regulations and guidance will be issued in relation to all the topic areas covered by the Act.

- 12.4 The Council and its Community Planning partners will have to determine processes and procedures for a number of areas of work. It will now be expected that we will identify and work with community bodies and groups in determining our local outcomes. It is also expected that we take into account the needs of those people who are disadvantaged due to socio-economic reasons. Locality plans have to be published to allow for comparison between outcomes and there is a requirement to actively involve local communities and groups in the development of these plans
- 12.5 Locality plans have to be published to allow for comparison between outcomes and there is a requirement to actively involve local communities and groups in the development of these plans. This sits with the new power in the Act for the Council to promote and facilitate the community in its decisions and activities including the allocation of resources. This in effect allows members of the public to be engaged at all levels in the planning and reviewing of Services. It is therefore important not to look at these in isolation, as there might be the danger of excluding a particular group or community body from a particular part of the process.
- 12.6 Additionally, the Council will need to develop processes and procedures in relation to:
- Greater community and individual involvement in Council decision making;
  - Participation Requests;
  - Register of Assets (including land);
  - Community Right to buy land;
  - A process and procedure in relation to Asset Transfer Requests including an Appeals Committee;
  - A register of Common Good Land and property; and
  - Allotments
- 12.7 In addition to this the following yearly reports will now be required:
- A local outcomes improvement plan progress;
  - Locality plan outcomes improvement plan progress;
  - Participation requests received;
  - Asset transfer requests received; and
  - Allotments.
- 12.8 Further to these reports the following must also be developed:
- Local outcomes improvement plan;
  - Locality plans ( number yet to be determined); and a
  - Food Growing Strategy
- 12.9 As stated previously, many of the requirements will involve considerable work in relation to determining ownership and status of land and assets. It is anticipated that a great deal of guidance and regulation will be issued in the near future. It is only then that the full implications of the Act will be known. Officers will advise Members of the work being done to respond to the Act and also when guidance is issued.

### **13. RECOMMENDATIONS**

**It is recommended that the Executive:**

- 13.1 Note the Act as passed;**
- 13.2 Ask for updates in relation to the review of Local Community Planning;**
- 13.3 Ask for further updates as further guidance and regulations are issued.**

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**DIRECTOR OF CORPORATE & HOUSING SERVICES**

Date: 14<sup>th</sup> July 2015  
Ref: ABB0815LG0815 – Community Empowerment  
Contact Name: Linda Gilliland

#### **LIST OF BACKGROUND PAPERS**

- 1. nil**

Any person wishing to inspect the background papers listed above should telephone Falkirk 01324 506230 and ask for Fiona Campbell.