

Corporate Policy and Strategy Committee

10am, Tuesday, 14 June 2016

Response to the consultation on the draft regulations of the Community Empowerment Act

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| Item number | 7.3 |
| Report number | |
| Executive/routine | |
| Wards | All |

Executive Summary

This report summarises the Council's position on the draft regulations for the implementation of Community Empowerment Act. Committee are asked to approve this document as the Council's official response to the Scottish Government's consultation.

The Council is supportive of the aims of the Act and feels that the draft regulations provide useful definitions and reference points.

The Council is concerned that: in seeking specificity around making requests, reporting outcomes and size of locality; and in emphasising physical locations rather than people, the regulations may create a burden that restricts rather than empowers. Due to this it is the Council's view that most of these decisions should be made locally and on a case-by-case basis.

The Council agrees that 30 days to respond to participation requests is reasonable, but would like to see the time period for involving additional organisations increase to 30 days (currently this is proposed to be 14 days).

Links

| | |
|--------------------------|-----------|
| Coalition Pledges | P33 |
| Council Priorities | CP4, CP13 |
| Single Outcome Agreement | SO4 |

The City of Edinburgh Council response to the consultation on the draft regulations of the Community Empowerment Act

1. Recommendations

- 1.1 To approve the response to the Scottish Government consultation on the draft regulations for the Community Empowerment Act.

2. Background

- 2.1 [The Community Empowerment Act](#) was agreed by the Scottish Parliament in 2015 and the majority of its provisions will come into force by late summer 2016. The express aim of the Act is to "help to empower community bodies through the ownership or control of land and buildings, and by strengthening their voices in decisions about public services."
- 2.2 As part of the implementation process, the Scottish Government are consulting on the draft regulations. Specifically this response relates to the consultations on [Community Planning](#), [Participation Requests](#) and [Asset Transfer](#).
- 2.3 The City of Edinburgh Council was consulted on the drafting of the Act and supports the aims of the legislation. The full text of the [Council's response to the 2013 consultation on the bill](#) is available online.

3. Main report

- 3.1 The following is a summary of the key areas relating to community planning and participation requests. The full Scottish Government response documents are included at the end of this report.

Community Planning

- 3.2 The Council agrees with the principles for effective community planning as defined by the draft guidance on community planning. The Council welcomes the statutory duty placed on all partners, the need to focus on prevention, and the renewed emphasis on community which aligns closely to the transformation operating model which has a focus on enhanced partnership working.

- 3.3 The Council is committed to fairness and improving the overall prosperity of Edinburgh, in line with the Scottish Government's approach to inclusive growth. As a result of ongoing work to understand how these goals can best be achieved, the Council has concerns that the guidance places too much emphasis on the identification of "poor areas." Poverty is a reality for many people who are in part or full time employment, and are living in areas that would not normally be associated with poverty. An area of strong focus for the Council is working to mitigate the effects of poverty on children. Children are the group most likely to be in poverty and this poverty is not geographically confined. Recognition needs to be given to the fact that most people who are affected by poverty do not live in "poor areas". In Edinburgh relative affluence and poverty exist in close proximity and defeat even small area geographic analysis and it is therefore especially important that the focus of engagement can be clear, without being always constrained to any geography.
- 3.4 Similarly, the focus on community bodies has the potential to disadvantage those individuals in communities who are not necessarily involved with community bodies. While the Council accepts that a community body may be necessary to begin a process, it is important that this process is inclusive and that the burden of ensuring inclusion does not fall solely on any one organisation.
- 3.5 The Act requires that Community Planning Partners (CPPs) review progress of outcomes and plans and revise these where appropriate. The Council does not feel it is ideal for the statutory guidance to specify a period of time for such review activity or to specify the maximum date for the publication of progress reports. Instead the guidance should suggest appropriate timescales, but require timescales to be defined through local agreement amongst CPPs - and where set timescales vary from those suggested there should be a stated rationale for this.
- 3.6 The Council does not feel the draft regulation on community planning should define the maximum size of a locality. Locality structures are not easily agreed by CPPs and frequently require years of planning to ensure operational services are aligned to local plans. The City of Edinburgh Council, Police Scotland, NHS Lothian and other partners have agreed co-terminus boundaries and all local planning arrangements will be arranged around these.
- 3.7 A fixed definition of locality by population could also serve to divide existing communities - for example, the Leith Neighbourhood Partnership covers a distinct community within Edinburgh which has its own strong identity and effective network of CPPs. Leith is composed of two electoral wards whose combined population is greater than the maximum of 30,000 proposed. While a proposed maximum of 30,000 residents or one electoral ward may be a reasonable restriction for more rural areas, in areas of dense population this may lead to the creation of artificial boundaries.

Participation Requests

- 3.8 The Council recognises that public bodies must have a formal process through which participation requests must be submitted. The guidance should state what information must be provided as part of participation requests as a minimum. However the guidance should not prevent public bodies from gathering information they feel is necessary and expedient. To assist with early implementation a form produced by Scottish Government would be useful.
- 3.9 The draft guidance specifies a maximum of 30 days for public bodies to assess initial request for participation and respond to the request. The Council agrees this timescale is reasonable and achievable.
- 3.10 The draft guidance sets a maximum of 14 days for additional CPPs to respond to participation requests. The Council feels this timescale is too restrictive given that some requests may relate to complex provision by many agencies. The Council suggests that 30 days would be a reasonable timescale.
- 3.11 The Council recognises the need to promote and support the Act, and in particular to engage with disadvantaged groups (including but not limited to younger people, those with disabilities, ethnic minorities, those with addiction issues, and those with learning difficulties) and to make particular effort to build capacity within those groups to better enable their participation in local democracy. While local communications and networks will be of use in achieving these goals, the Council feels that national awareness-raising of best-practice examples by community groups would help to stimulate currently inactive residents to become more active in their communities.
- 3.12 The publication of any outcome plan should be a process co-produced and agreed with all CPPs.

Asset Transfer

- 3.13 The Council agrees that the regulations with regard to asset transfer set out reasonable timescales for decision-making and provision of information, however the Council observes that it is in the interest of both Local Authorities and community organisations that approved asset transfer be accomplished quickly. While the guidance specifies six months as a length of time available to make decisions, individual local authorities would want to expedite this process wherever possible to minimise cost of asset retention.
- 3.14 The outline process for notification and registering objections to asset transfer may result in several problems. The requirement to post notice online and at the site to be transferred could effectively exclude large numbers of residents who may have a view. In practical terms, it may be for local authorities to take other measures to ensure wider community awareness, but such a duty could usefully be required and defined in the guidance.
- 3.15 The online posting of objections to asset transfer may deter some individuals and organisations from engaging in discussion over use of community assets. This

highlights the larger issue that further guidance may be needed on how to manage competing and non-complimentary demands on an asset. There is significant potential for delay if several organisations request the same asset, these delays may pose significant risk to community organisations and result in additional costs for public bodies.

- 3.16 Further guidance may also be necessary for how a public body - or specifically a local authority with regard to any transferred asset - should behave where community organisations are not financially viable and there would be clear community benefit from asset recovery and / or redistribution to alternative community organisations.
- 3.17 Excluding those issues highlighted above, the Council takes no view on the effectiveness or robustness of the proposed appeals mechanism, but such measures should be reviewed after a reasonable time to ensure they are not unreasonably burdensome on either public bodies or community organisations.

4. Measures of success

- 4.1 The Act creates a presumption that community requests will be met, unless there are sufficient reasons for refusal. The Council will monitor its overall response to requests and integrate this into performance reporting.

5. Financial impact

- 5.1 The total financial impact of the Act is difficult to determine, as this depends on the extent to which communities use the powers which have been given to them. However centralised monitoring of requests, responding to requests and participation in engagement need to be treated as mainstream activities for all services.

6. Risk, policy, compliance and governance impact

- 6.1 Participation requests will be monitored for adherence to timescale, refusals and outcomes (through separately agreed arrangements). There are potential local and national reputation risks by failing to meet timescales and by refusing a high proportion of participation requests.

7. Equalities impact

- 7.1 The powers given to communities by the Act apply to broad definitions of community, which are not necessarily geographically defined. The Act and the draft regulations empower equalities groups and there are no onerous obligations required by the Act to be considered a group, but the emphasis on groups within

the draft regulations has the potential to disadvantage individuals not engaged with local groups.

8. Sustainability impact

- 8.1 It is hoped that through local democratic arrangements and the transfer of under-used assets to community ownership that the overall sustainability of services and assets in the city can be improved.

9. Consultation and engagement

- 9.1 This is an officer-based response to the draft regulations. Invitations were made to all officers directly involved in Edinburgh Partnership support, and those officers were asked to seek views from their service areas. The consultation is open to the public, therefore no partner or public responses form part of the Council's response.

Andrew Kerr

Chief Executive

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10. Links

| | |
|---------------------------------|---|
| Coalition Pledges | P33 - Strengthen Neighbourhood Partnerships and further involve local people in decisions on how Council resources are used |
| Council Priorities | CP4 - Safe and empowered communities CP13 - Transformation, workforce, citizen & partner engagement, budget |
| Single Outcome Agreement | SO4 - Edinburgh's communities are safer and have improved physical and social fabric |
| Appendices | |

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



RESPONDENT INFORMATION FORM

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

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

- Individual
 Organisation

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

The City of Edinburgh Council

What is your phone number?

What is your address?

Waverley Court
4 East Market Street

What is your postcode?

EH8 8BG

What is your email?

david.porteous@edinburgh.aov.uk

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

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

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

- Yes

No

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

Questions

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

Please explain why.

We agree the principles.

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

No.

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

Yes No

Please explain why.

There needs to be flexibility to review in light of changing local circumstances.

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

4 months 6 months Other

If other please provide timescale. Please explain why.

The Council does not feel it is ideal for the statutory guidance to specify a period of time for such review activity or to specify the maximum date for the publication of progress reports. Instead the guidance should suggest appropriate timescales, but require timescales to be defined through local agreement amongst CPPs - and where set timescales vary from those suggested there should be a stated rationale for this.

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

The Council agrees with the principles for effective community planning as defined by the draft guidance on community planning. The Council welcomes the statutory duty placed on all partners, the need to focus on prevention, and the renewed emphasis on community which aligns closely to the transformation operating model which has a focus on enhanced partnership working.

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

The Council does not feel the draft regulation on community planning should define the maximum size of a locality. Locality structures are not easily agreed by CPPs and frequently require years of planning to ensure operational services are aligned to local plans. The City of Edinburgh Council, Police Scotland, NHS Lothian and other partners have agreed co-terminus boundaries and all local planning arrangements will be arranged around these.

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

A fixed definition of locality by population could also serve to divide existing communities - for example, the Leith Neighbourhood Partnership covers a distinct community within Edinburgh which has its own strong identity and effective network of CPPs. Leith is composed of two electoral wards whose combined population is greater than the maximum of 30,000 proposed. While a proposed maximum of

30,000 residents or one electoral ward may be a reasonable restriction for more rural areas, in areas of dense population this may lead to the creation of artificial boundaries.

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

The Council is committed to fairness and improving the overall prosperity of Edinburgh, in line with the Scottish Government's approach to inclusive growth. As a result of ongoing work to understand how these goals can best be achieved, the Council has concerns that the guidance places too much emphasis on the identification of "poor areas." Poverty is a reality for many people who are in part or full time employment, and are living in areas that would not normally be associated with poverty.

An area of strong focus for the Council is working to mitigate the effects of poverty on children. Children are the group most likely to be in poverty and this poverty is not geographically confined.

Recognition needs to be given to the fact that most people who are affected by poverty do not live in "poor areas". In Edinburgh relative affluence and poverty exist in close proximity and defeat even small area geographic analysis and it is therefore especially important that the focus of engagement can be clear, without being always constrained to any geography.

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

The focus on community bodies has the potential to disadvantage those individuals in communities who are not necessarily involved with community bodies. While the Council accepts that a community body may be necessary to begin a process, it is important that this process is inclusive and that the burden of ensuring inclusion does not fall solely on any one organisation.

Consultation on the Draft Participation Request (Procedure)(Scotland) Regulations 2016



RESPONDENT INFORMATION FORM

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

Are you responding as an individual or an organization?

- Individual
 Organisation

Full name or organisation's name

The City of Edinburgh Council

Phone number

Address

Waverley Court
4 East Market Street
Edinburgh

Postcode

EH8 8BG

Email

David.porteous@edinburgh.gov.uk

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- Yes
 No

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

Questionnaire

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

Yes No

Please give reasons for your response.

The Council recognises that public bodies must have a formal process through which participation requests must be submitted. The guidance should state what information must be provided as part of participation requests as a minimum. However the guidance should not prevent public bodies from gathering information they feel is necessary and expedient. To assist with early implementation a form produced by Scottish Government would be useful.

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

Yes No

Please give reasons for your response.

The information required could not be efficiently collected without a form.

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

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

Yes No

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

The Council feels this timescale is too restrictive given that some requests may relate to complex provision by many agencies. The Council suggests that 30 days would be a reasonable timescale.

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

Share examples of effective and innovative practice demonstrating a positive impact on outcomes. Ensure that disadvantaged and under-represented groups, including young people, are made aware of the possibilities of participation requests. Some national publicity would be helpful, as would a toolkit for public service bodies.

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

The regulations should emphasise the need for capacity building support to community participation bodies to make participation requests but this has resource implications which need to be addressed on a partnership basis.

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

Disadvantaged and under-represented groups, including young people, people with learning disabilities, people with mental health issues, people suffering from drug and alcohol misuse could be specified as potentially needing additional support.

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

Yes No

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

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

The impact on other parts of the community needs to be taken into account, especially in relation to people with protected characteristics.

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

The publication of any outcome plan should be a process co-produced and agreed with all CPPs.

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

None.

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

None.

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

The Council recognises the need to promote and support the Act, and in particular to engage with disadvantaged groups (including but not limited to younger people, those with disabilities, ethnic minorities, those with addiction issues, and those with learning difficulties) and to make particular effort to build capacity within those groups to better enable their participation in local democracy. While local communications and networks will be of use in achieving these goals, the Council feels that national awareness-raising of best-practice examples by community groups would help to stimulate currently inactive residents to become more active in their communities.

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations



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 Organisation

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

The City of Edinburgh Council

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What is your email?

David.borteous@edinburgh.gov.uk

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- Yes
 No

Asset Transfer under the Community Empowerment (Scotland) Act 2015: Consultation on Draft Regulations

Questionnaire

Q1: Do you agree that the types of land set out in the draft Community Empowerment (Registers of Land) (Scotland) Regulations 2016 need not be included in relevant authorities' registers?

Yes X No

If not, please explain what you would change and why.

Q2: Are there any other types of land that relevant authorities should not have to include in their register? Please explain what should not be included and why.

No.

Q3: Do you have any comments on the proposals for guidance on what information registers should contain and how they should be published?

No.

Q4: Is there any information you think a community transfer body should be able to request from a relevant authority, that it would not be able to obtain under FOISA or the EIRs?

No.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable?

Yes X No

If not, please explain what you would change and why.

Q6: Is there any other information that should be required to make a valid request?

No.

Q7: Do you have any comments on the proposals for acknowledgement of requests?

None.

Q8: Do you have any comments on the proposed requirements for notification and publication of information about a request?

Objectors to an application may be deterred if their comments are attributed to them online. The publication of the Notice only on line and at the site could exclude members of the community without access to online facilities.

Q9: Do you think 6 months is a reasonable length of time for the relevant authority to make a decision on an asset transfer request? (This time may be extended if agreed with the community transfer body.)

Yes No

If not, how long should the period for making a decision be?

It would be in the Authority's interest to expedite the decision making process to reduce any financial costs of retaining the Asset. Therefore, the Authority must invest in a robust procedure and sufficient resources.

Q10: Do you agree with the proposals for additional information to be included in a decision notice?

Yes No

If not, please explain what you would change and why.

Q11: Do you agree that the Scottish Ministers should be required to appoint a panel of 3 people to consider reviews of Ministers' own decisions?

Yes X No

If not, how do you think these reviews should be carried out?

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months?

Yes X No

If not, how long should the period for making a decision be?

Q13: Do you have any other comments about the draft Asset Transfer Request (Review Procedure) (Scotland) Regulations 2016 or draft Asset Transfer Request (Appeals) (Scotland) Regulations 2016?

Further guidance may be required for instances when there is competing demands from different community transfer bodies for the same Asset.

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded?

Yes No

If not, how do you think these reviews should be carried out?

No comment.

Q15: Do you agree that the documents should not be published in relation to appeals where no contract has been concluded?

Yes No

Please explain your reasons.

No comment.

Q16: Do you agree that no third party representations should be allowed in relation to appeals where no contract has been concluded?

Yes No

Please explain your reasons.

No comment.

Q17: Do you have any comments on the proposed procedures for appeals where no contract is concluded?

No.

Q18: Do you have any comments on the proposed procedures for applications to Ministers for Directions?

None.