

EAST RENFREWSHIRE COUNCILWednesday 15 June 2016Report by Deputy Chief ExecutiveCONSULTATION ON THE GUIDANCE FOR THE COMMUNITY EMPOWERMENT
(SCOTLAND) ACT 2015**PURPOSE OF REPORT**

1. The purpose of this report is to seek approval for the joint East Renfrewshire Community Planning Partnership (CPP) response to the secondary legislation issued to accompany the Community Empowerment (Scotland) Act 2015.

RECOMMENDATION

2. The Council is asked to:

- approve the attached CPP response (Annex 1) to the consultation on Community Empowerment (Scotland) Act guidance.

BACKGROUND

3. The Community Empowerment (Scotland) Act 2015 was enacted in July 2015 and Scottish Government published draft guidance and regulations for consultation in March 2016. This response is compiled on behalf of the East Renfrewshire Community Planning Partnership (CPP). The CPP allows key partner organisations to come together to plan and deliver services for local communities with a focus upon reducing inequality.

4. At the core of the Act is community engagement and community participation. Consultation with communities is not enough to fulfil the requirements of the Act, there must be systematic and meaningful participation from communities to allow the Community Planning Partnership to fully understand the need, aspirations and priorities for the community. This understanding will in turn shape the new Local Outcomes Improvement Plan (a strategic plan similar to the current Single Outcome Agreement) and it will also shape the way in which services are delivered.

COMMUNITY ENGAGEMENT

5. East Renfrewshire Council and its partners have demonstrated positive community engagement in a number of service areas in recent years and have used this vital contribution from communities to shape how services are delivered. Below are some examples of community engagement and participation shaping service delivery, which the CPP can build upon as it works to implement the Act.

Health and Social Care Partnership Community Led Conversations

6. During May 2016, the HSCP have been leading a programme of events to promote community led support to ensure there is community participation for how health and social care will be delivered in future. The aim is to enable people to have as much choice or control as they want, or are able to have, when they require help, information, care or support.

Early Years Collaborative

7. The Early Years Collaborative engaged with the community of Auchenback to identify where the community is resilient and where there is a need for capacity building support to enable addressing their own needs. The focus was on the areas of play, attachment, financial inclusion, and health and wellbeing. The group engaged with 170 families (64% more than the target), this was carried out by hosting focus groups with community groups, school drop-ins and by online survey. A feedback event was held to share the survey results with the community and to allow them to reflect on the information gathered. The collaborative will now develop the next steps, opportunities for ongoing dialogue, engage the community at multiple project stages, seek engagement strategies that develop new leaders and greater community capacity, create strong networks that can lead to community engagement beyond the length of the project.

East Renfrewshire Additional Support Needs Parent Action Group

8. A group of parents who have one or more children on the autistic spectrum, formed to support each other and to work on better outcomes for their children. They are now a well formed community capacity-building group who have identified a gap and are working towards providing:

- Support for parents and under 5's
- Social group/club/ for 5-12 years based on their own interests and likes
- Social activity for 12-25 years (young adults)
- Support/confidence building for parents attending groups.

Joint Schools Faith Campus

9. Statutory public consultations were held in line with pre-planning application public events in which members of the public could view and comment upon the proposals. In addition to the statutory planning requirements, extensive engagement took place with stakeholders for the proposed campus including staff, pupils, parents, community councils and the Education Department as well as leaders from both the Catholic and Jewish faiths. This engagement informed the topics for a series of workshops which were held to gather information on a range of issues including priorities for the campus, use of external space, and comments on the architect's draft drawings.

Community Litter Picks

10. The environment department has an ongoing programme of Community Litter picks. The purpose of these litter picks is to engage the local community in the issues surrounding litter and the impact it has on the local areas. The advantage of these litter pick are that the people picking the litter can see the scale of the problem and the community can see that their local area is being looked after by its own members. These community litter picks can also clear areas of private land that the council cannot encroach onto. We have assisted with 17 litter picks so far this year involving over 200 volunteers and school pupils.

CPP RESPONSE TO CONSULTATION

11. The attached response (Annex 1) incorporates the views from partners in the East Renfrewshire Community Planning Partnership and has also been informed by discussions with Scottish Government officials. The intention of our response is to highlight ways in which the clarity of the guidance can be improved, to help ensure the implementation of the Act is as smooth as possible.

RECOMMENDATION

11. The Council approves the attached CPP response to the Community Empowerment (Scotland) Act guidance.

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Background papers

None

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Annex 1

**Consultation on the Guidance for the Community Empowerment (Scotland) Act 2015
East Renfrewshire Community Planning Partnership Response**

Background

The Community Empowerment (Scotland) Act 2015 was enacted in July 2015 and Scottish Government published draft guidance and regulations for consultation in March 2016. This response is compiled on behalf of the East Renfrewshire Community Planning Partnership (CPP). The CPP allows key partner organisations to come together to plan and deliver services for local communities.

The response

Five separate documents of guidance were issued by Scottish Government. It is proposed that we submit responses to four of these:

- Part 2: Community Planning;
- Outcome Participation Requests;
- Asset Transfer; and
- Community right to buy abandoned, neglected or detrimental land.

There will be no response to the fifth piece of guidance on the community right to buy crofting land as there is no crofting land within East Renfrewshire.

The consultation questions are in bold, followed by the CPP response.

PART 2: COMMUNITY PLANNINGGuidance

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

The nine principles are essential and build upon the Christie Commission report as well as continue the strategic direction towards achieving the Statement of Ambition and other key policy statements. It is important to recognise community planning work under one banner. The principles for community planning have the thread of partnership working throughout which will strengthen co-production and joint working towards achieving outcomes. There is recognition among CPP partners that partner activity should be aligned to avoid duplication of output and to maximise resources.

While we appreciate the principle for shared leadership has been broadened to include additional statutory partners, the guidance does not go far enough to recognise the vital contribution from Third Sector partners.

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?

Setting national performance expectations undermines the influence of the local community and community participation. Each authority will have different conditions, needs and issues which will determine their outcomes and priorities. There should not be the requirement for common short and mid-term expectations on a national basis. If there are to be common performance expectations, these should be highly prioritised leave resource for local priorities.

Each national organisation has their own standards, sometimes statutory standards, to work to which may not be consistent with common short or medium term performance expectations.

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?

CPPs should be held accountable to their community for progress towards agreed outcomes, or for its lack of progress. Each outcome will have a different timeframe, target and measure therefore CPPs should commit to regular review of the LOIP to ensure the outcomes remain relevant and are still priorities for the communities. Timeframes should be long enough to measure real progress but with sufficient discretion to ensure local needs are met.

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?

6 months is the preferred option from the majority of partners.

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

With reform to HSCP and community justice, there is danger of 'engagement fatigue' among communities, with particular concern for those hard to reach communities. Expectations must remain proportionate and balanced.

As a CPP we welcome the change towards shared leadership as opposed to council-led community planning. The role and scale of partner contribution is integral to the delivery of community planning activity. However, it is important to recognise that not all named national organisations have a role in community planning in every local authority, for example there is no national park authority within East Renfrewshire.

Locality Planning Regulation**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?**

A single criteria based on population size is not helpful guidance to identify 'a community'. Population size is arbitrary, communities have shared identities, characteristics and geographic communities may have well defined or porous boundaries. It will be more difficult to demonstrate true community participation as the size of the community increases and therefore should be discretionary.

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?

Having maximum populations of 30,000, 25,000 and 20,000 residents would create arbitrary boundaries that would not be meaningful to communities. In East Renfrewshire 30,000 residents would comfortably encompass many communities and would account for approximately a third of the population. Within a community of that size, there would be a large variation of socio-economic circumstances and therefore different priorities. Communities should not be defined solely by population but should have a common geographical, cultural or identity-defining characteristics beyond a number.

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

No comment.

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

The larger the population of the community, the greater the risk is for equalities issues as the more diverse a population is, there will be a greater range of need.

PARTICIPATION REQUESTS

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

No, we do not think that there should be a statutory form but each CPP should have scope to create a locally relevant process to be applied consistently to all participation requests. There should be transparency and systematic information provided for all requests to ensure fairness as well as to demonstrate an audit trail to show the correct process has been followed. As there are many public service authorities that can receive a participation request, a non-statutory form developed for use within the CPP would allow for consistency between these different organisations. A non-statutory form is appropriate provided it is not overly onerous or complicated and does not prevent any community groups from applying to make a request. It is also important for each public service authority to have a consistent form and not to each have their own one which could lead to multiple forms for community bodies to contend with. A further consideration is that there may be conflict with other pieces of legislation which require information to be gathered and recorded in specific formats.

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

No, we would believe that requests should be in writing and that a non-statutory form would be a consistent and fair method of application.

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

Page 5 of the guidance lists the information required to be submitted in the application:

- specify an outcome that results from (or is contributed to by virtue of) the provision of a service provided to the public by or on behalf of the authority
- set out the reasons why the community participation body considers it should participate in the outcome improvement process
- provide details of any knowledge, expertise or experience the community participation body has in relation to the specified outcome
- provide an explanation of the improvement in the specified outcome which the community participation body anticipates may arise as a result of its participation.

We suggest that this list should be expanded and the community participation body should also:

- demonstrate they have an open membership
- include their code of conduct
- provide evidence of how they represent the community it purports to and also how they link to the wider community
- show that they have engaged with the wider community and have community buy-in for their request
- provide a description of how they will measure that their involvement has improved an outcome
- include any conflicts of interest or declarations of interest
- include details on their constitution or governance arrangements along with their aims and financial processes
- demonstrate that their proposal will be consistent with equalities legislation.

This additional information would allow the public service body to consider whether existing avenues to participation already exist for the outcome that the group are applying to participate in. It would also ensure that opportunities for involvement in outcome improvement are proportionate, streamlined and avoid duplication.

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

All timescales should be measured in working days across all of the CE(S)A guidance to ensure clarity and to avoid deadlines falling on weekends or public holidays. 14 days is appropriate to acknowledge receipt and begin a discussion but does not allow time for adequate investigation and assessment of the request by an additional public service authority. 20 working days is a more appropriate timeframe for this aspect of the process.

At present, the guidance suggests a range of timescales some are 14 days, some 28 days and some are 30 days. The regulations should have a consistent timescale for each stage of the application based on working days which would allow for greater clarity and ensure each stage of the process has the same statutory status.

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

Methods should be at the discretion of the CPP and should be appropriate to the community.

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?

Public service bodies should make the participation request process as clear as possible and have transparency about how the process works and how decisions are made. There should be one point of contact for the public service authority to avoid confusion. There may be potential conflicts of interest where the public service authority is required to provide support to community bodies and then make a decision on the request they have supported. Support requirements will depend on the capacity of the group and the nature of the request as well as the resource required to provide this support.

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

Community groups for vulnerable people or groups with equalities criteria or vulnerabilities as a result of life circumstances, mental health, abuse or addiction.

Q8. Is 30 days a reasonable amount of time? If not, how long should the period for making a decision be? How long should the public service authority have to assess the participation request and give notice to the community participation body?

As stated above, timescales should be calculated in working days. Although 30 days is sufficient to acknowledge receipt from all parties, it is not enough time to investigate a request, particularly if it is a complex request across multiple public service authorities who would need to coordinate their assessment and response. There may also be multiple requests to one public service authority at the same time. To ensure adequate time is allocated to each application and to consult with partner organisations, 30 days may not be practical. Provided both parties are clear about the timescales involved and these are reasonable and fair, there is no requirement to be restricted to 30 days and there should be a sliding scale based on the complexity of the request.

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

In line with the spirit of the guidance we believe that an application opens a dialogue with a community body. A simple concise summary of the reasons for a decision notice is appropriate. More details could be provided on a discretionary basis by the CPP.

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.

No comment.

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.

No comment.

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

The reporting process should be sustainable and proportional and not overly bureaucratic.

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

Whilst we understand that the Scottish Government currently has no plans to introduce an appeals process, we consider it likely that an appeals process will be required. A suitable process could include review of the decision by elected members or appropriate board of the public service authority.

The outcome improvement process should aim to minimize bureaucracy where possible to ensure that communities are able to participate and improve outcomes, whilst public authorities have the clear decision making process based on the right information

Following discussion with Scottish Government officials we believe the guidance would benefit from further clarity in the following areas:

The guidance should be clearer that, when agreeing to an Outcome Improvement Process, the public service authority is agreeing to a **discussion** about how a community specified outcome could be improved (as opposed to agreeing to the **specific process** the community body has proposed).

The guidance should provide a broad definition of an outcome. The guidance should also make a distinction between 'outcomes' that will be agreed as priorities in the Local Outcome Improvement Plan (LOIP) and the 'outcomes', which are defined by the Community bodies, for a Participation Request.

The guidance should clarify that Community Participation Bodies which represent communities of interest will be required to have a majority of members within the CPP's geographical area.

ASSET TRANSFER

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

Yes.

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.

The list of exempt property should be expanded to also include areas of land which are too small in size to be meaningful. This could be aligned to the Land Registration (Scotland) Act s.22 - a plot of land which is of inconsiderable size, no practical utility and is not registered in the Land Register. Designated public open spaces should also be exempt from the register.

Land that is owned by the Local Authorities that is held under a long lease by a tenant should be exempt.

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

The format of the register should follow the current requirement upon Local Authorities to have an asset register that complies with financial regulations. Registers should be updated annually to ensure accurate reflection of the current status of the assets of the local authority, including those which have an asset transfer request pending.

There should be clear definitions of the types of property (e.g. "office", "depot", "park") for entries in the register to ensure there is consistency across all local authorities.

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?

The information that a community transfer body can access under FOISA and EIRs should be appropriate for their application and we do not propose to expand this.

Q5: Do you think the proposed additional requirements for making an asset transfer request are reasonable? If not, please explain what you would change and why.

Yes – no further comment.

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

The community transfer body should demonstrate links with and support from the wider community as well as a thorough and robust engagement process. The application should also include details on environmental sustainability.

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

No further comment.

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

No further comment.

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

Agree – no further comment.

Q10: Do you agree with the proposals for additional information to be included in a decision notice? If not, please explain what you would change and why.

Agree – no further comment.

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

Agree – no further comment.

Q12: Do you agree that a local authority should be required to make a decision on a review within 6 months? If not, how long should the period for making a decision be?

Agree – no further comment.

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?

No further comment.

Q14: Do you agree that the Scottish Ministers should appoint a single person to consider an appeal where no contract has been concluded? If not, how do you think these reviews should be carried out?

Agree – no further comment.

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

Yes the documents should not be published in order to minimise the influence of non-concluded applications upon future applications.

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

Agree – no further comment.

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

No further comment.

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

No further comment.

COMMUNITY RIGHT TO BUY ABANDONED, NEGLECTED OR DETRIMENTAL LAND

Q1. Do you agree with the above matters? If not, please explain

Agree – no further comment.

Are there any matters you believe should be added? If so, please give details

No comment.

Are there any matters you believe should be removed? If so, please give details.

No comment.

Q2. Do you agree that the above types of land should be land pertaining to land that is a person's home? If not, please explain

Agree – no further comment.

Are there any types of land that you believe should be added? If so, please give details.

No comment.

Are there any types of land that you believe should be removed? If so, please give details.

No comment.

Are there any descriptions or classes of land that you believe should not be eligible for purchase by a Part 3A community body? If so, please give details.

Land that is contaminated whether chemical or vegetation contamination should not be eligible for purchase by a community body. Land that is a public safety concern should also be excluded for example, land which forms part of a former quarry and could pose a risk to the public when accessed.

Q3. Do you agree with the above descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy for the purposes of Part 3A of the Land Reform (Scotland) Act 2003? If not, please explain.

Agree – no further comment.

Are there any descriptions or classes of occupancy or possession which are, or are to be treated as, a tenancy, that you believe should be added? If so, please give details.

Land that is held under a commercial or industrial lease, or a ground lease, should be exempt from applications for purchase.

Q4. Do you agree that a regulator should be described as a person, body or office-holder that has the power to carry out regulatory functions? If not, please explain.

Agree – no further comment.

Are there any persons, bodies or office-holders that you believe should be included in the definition of regulator, but are not listed above? If so, please give details.

Local Authority - Environmental Health and Local Authority – Building Control are missing from the definition.

Are there any persons, bodies or office-holders that you believe should not be included in the definition of regulator? If so, please give details.

No comment.

Q5. Do you think the proposed dates are appropriate? If not, please explain

Agree – no further comment.

Q6. Do you think the proposed dates are appropriate? If not, please explain

Agree – no further comment.

Q7. Do you agree with proposals? If not, please explain

Agree – no further comment.

Q8. Do you agree with the above list of transfers or dealings? If not, please explain

Agree – no further comment.

**Are there any that you believe should be added? If so, please give details.
Are there any that you believe should be removed? If so, please give details.**

No comment.

Q9. The above section sets out proposals surrounding the rights which are to be suspended when a valid application is made under Part 3A. Do you agree with these proposals? If not, please explain

We do not agree that these rights should not be suspended. Property rights are fundamental and should not be undermined.

Are there any other rights that you believe should be suspended? If so, please give details.

No comment.

Are there any of these rights that you believe should not be suspended? If so, please give details.

No comment.

Q10. Do you agree with these proposals? If not, please explain

Are there any other circumstances under which you believe a community body should be able to apply for reimbursement? If so, please give details

Agree – no further comment.

Q11. Do you agree with these proposals? If not, please explain

Agree – no further comment.

Q12. Do you agree with these proposals? If not, please explain

Agree – no further comment.