Community Empowerment (Scotland) Bill  
Briefing note and VAS policy statement – 2nd September 2014

The Community Empowerment (Scotland) Bill was introduced to the Scottish Parliament on 11th June 2014. The Local Government and Regeneration Committee has been appointed lead committee for Stage 1 and has issued a call for evidence on the Bill which closes on 5th September.

The Bill is split into 9 parts as follows:

- Part 1 – National Outcomes
- Part 2 – Community Planning
- Part 3 – Participation Requests
- Part 4 – Community Right to Buy Land
- Part 5 – Asset Transfer Requests
- Part 6 – Common Good Property
- Part 7 – Allotments
- Part 8 – Non-Domestic Rates
- Part 9 – General

The parts that VAS plans to focus on are National Outcomes, Community Planning, Participation Requests and Asset Transfer Requests. However, if there are other areas which the network feels strongly about we will look to include these in our response to the Bill.

Part 1 – National Outcomes

This builds upon the ‘Scotland Performs’ framework, putting into statute the need for Scottish Ministers to set national outcomes and for public bodies working on devolved functions to give regard to these outcomes when undertaking their activities. The Scottish Ministers must consult such persons as they consider appropriate when setting the outcomes. Ministers can review the outcomes at any time up to a maximum period of 5 years, at which point they must review and report on the outcomes.

VAS supports putting the setting of national outcomes into primary legislation and therefore supports the Scottish Government in this regard. However, we believe this section needs to be strengthened further to ensure that meaningful consultation is undertaken on the outcomes with a broad range of stakeholders, allowing for civic society and communities to voice their opinion and help set the outcomes. This will help empower communities rather than the process being driven and set by the centre. In order for a participatory approach to be successful the process for setting national outcomes needs to be simple and done in plain English that people in communities can relate to. Throughout this response we are calling for the National Standards for Community Engagement to be adopted in this regard to act as a code of conduct for engagement, albeit an updated list of standards that has co-production embedded within them.
We would also advocate for Parliamentary review of the outcomes at the point of them being reported on. This would allow for greater scrutiny and transparency and would help hold the Scottish Government and public bodies to account for achieving the outcomes. Finally, we consider the wording of ‘having regard for’ the outcomes when carrying out functions to be not assertive enough at present and would welcome stronger language being used.

Part 2 – Community Planning

The Bill will set about putting Community Planning Partnerships on a statutory basis, with defined roles, responsibilities and duties on public sector partners. It sets duties on public agencies and extends the list of key partners to include a wider range of public bodies. The Bill amends previous legislation so that community planning is the process by which public bodies work together to plan for, resource and provide services which improve outcomes in the local authority area.

VAS argued in our response to the consultation on the draft Bill that in order for community planning to be effective it must undergo significant reforms, making it a community led, collaborative, budget sharing, bottom-up process. We are therefore concerned about the limited progress that has been made in the current iteration of the legislation. The reforms needed in community planning extend far beyond this Bill, however, we do believe it is necessary to make changes to the Bill at present in order to facilitate these longer term reforms. Therefore there are a number of additions and amendments that we believe would improve the Community Planning section of the Bill:

- At present Third Sector Interfaces are represented on all 32 CPPs in Scotland. This is a position strengthened by the ‘Agreement on Joint Working on Community Planning and Resourcing’ released in September 2013 which states: “Making the most of the total resources available locally means ensuring that the Third Sector Interface is a full community planning partner and drawing on the huge commitment of all those, including volunteers, who work to improve communities.”. VAS is therefore keen to ensure legislation recognises the role of the third sector in community planning via the support of Third Sector Interfaces (TSIs), this role is not currently recognised or alluded to within the Bill. We acknowledge that ‘community bodies’ have been mentioned, and welcome this development, but are led to believe this would not include Third Sector Interfaces.

The definition given in Section 4(8) does not seem to encompass the unique role TSIs play in our communities, connecting and enabling voices from the third sector and bringing these voices to the community planning table. Whilst we do not wish to see duties placed upon Third Sector Interfaces, as they are not statutory bodies, we believe that in order to ensure they are a mandatory member of CPPs it is vital that there is a mechanism within the Bill for them to be written into guidance, perhaps by including reference to an advocate for the local third sector on the face of the Bill, this in turn would be described in guidance as the Third Sector Interface. If the Scottish Government fully believes in creating a culture change in the way resources are managed and services designed and delivered it needs to provide parity of esteem to TSIs as a voice for the local third sector. Community Planning should be

about harnessing the totality of a localities assets and using them effectively to improve person centred, co-produced, outcomes, this is not possible without the inclusion and recognition of the third sector. We believe it is possible to write an advocate for the third sector into legislation whilst excluding them from certain duties placed upon statutory partners. VAS will suggest amendments to this effect.

- In order to secure the input from community bodies that is necessary to inform community planning there needs to be a strong community capacity building element, however, this does not appear to be present in the current iteration of the Bill. The duty on Community Planning Partners should extend to beyond merely securing input from community bodies to pro-actively developing the capacity for community bodies to exist and develop their knowledge in order to contribute to the community planning process. There needs to be an acknowledgement of the role the TSI plays in third sector engagement, involvement and capacity building. It would be possible to amend 8.1(b) to include a responsibility on statutory partners to provide adequate resourcing of community and third sector involvement. There should also be an onus on community planning partners to produce materials at CPP level in an accessible and timely manner to allow smaller organisations the opportunity to process and prepare their response in order for them to contribute fully to the CPP process. Further to this a mechanism needs to be introduced to allow for a right to appeal should a community bodies application to participate in a CPP be rejected.

- The current wording around involvement of community bodies is too ambiguous, stating that the CPP must ‘make all reasonable efforts to secure participation of such community bodies in community planning” and “consider which community bodies are likely to be able to contribute to community planning”. The language still leans towards top-down involvement rather than bottom-up processes, involvement is on the terms of the statutory agencies, at the very least we would be advocating guidance on the Bill once enacted to define more clearly what constitutes ‘reasonable effort’. Important in this is that legislation should outline that the CPP must ensure demonstrable community involvement (beyond community bodies solely) in the development and scrutiny of CPP progress against outcomes. Third Sector involvement in this regard should be included independent of community bodies, third sector and community bodies are not the same thing and therefore the role of both, and needs to engage both, needs to be stipulated individually in relation to section 4.5 and section 5.3. The use of mechanisms such as participatory budgeting and citizen’s juries are two methods by which the CPP could demonstrate community involvement, VAS would encourage the committee and Scottish Government to consider how these approaches could be incorporated into guidance.

- The Bill does not make it clear whether invited community bodies will be considered as full CPP members or if they are just there on a consultative basis. If only on a consultative how do they guarantee that their views have an influence on the CPP?

- A key element of local outcome improvement plans (5), in our view, is demonstrating how that outcome will help tackle inequalities. Therefore, we would argue that the Bill should make it mandatory for local outcome improvement plans to outline how inequalities in an outcome will be tackled (5.2(b)). Further to this, we believe it would be beneficial for
outcome improvement plans to be able to demonstrate the involvement of the community and third sector in that locality (5.3) rather than just outlining who to consult.

The VAS vision for community planning extends beyond what can be accomplished through this Bill and we acknowledge that there will be challenges in achieving this vision, particularly around a culture change in sharing resources and co-producing outcomes. We hope this Bill can be a step in the right direction and will continue to call for a much improved, community focused, version of community planning.

Part 3 – Participation Requests

It is intended that a participation request will be a mechanism by which community bodies (self-defined based upon geographical boundaries, common interest of the characteristic of its members), can request to be involved in an outcome improvement process. As the policy memorandum states: “Where an appropriate community body, or a group of bodies, believes it could help to improve the outcome of a service, it will be able to make a request to the public body or bodies that deliver that service, asking to take part in a process to improve that outcome.”

VAS welcomes the inclusion of participation requests in the Bill and believes it is a move in the right direction in terms of communities having a say in the design and delivery of public services. We would emphasise the need for participation requests to be a simple process to ensure high levels of participation, key to this is the community capacity building element we proposed in the community planning to section that will help secure participation from a wide cross-section of society. The third sector has significant knowledge and expertise to bring to the table and can help significantly improve outcomes, however, the system must be simple enough that it does not overstretch their current capacity and resources as this may detract from their current role. The onus must be placed upon statutory bodies to actively pursue and resource the input from relevant community and third sector organisations in order to improve outcomes for all society. We welcome the removal of the need for community bodies to provide evidence of how their inclusion in an outcome improvement process would be beneficial, as was written into the draft Bill.

There are certain elements in this part that we believe could be strengthened further. Section 14 lists criteria describing a community-controlled body, we have concerns this is overly prescriptive and that a body having a written constitution would suffice in the majority of cases. Added to this is the lack of an appeal process should the public service authority reject the participation request. This leads to a lack of transparency and accountability and goes against the general principles of the Bill. We would also like to see a duty on public service authorities to have to publicise the existence of the participation request mechanism and encourage and support community bodies to become actively engaged.

Consideration must be given to the role of ‘arm’s length organisations’ (ALEOs) and their potential role in participation requests and throughout the Bill. We are currently unclear of their potential role and are keen to ensure any role they do have is not to the detriment of the communities and local third sectors potential impact.
Again, this section would benefit from the adoption of an updated set of National Standards for Community Engagement in primary legislation. This is very much in line with the spirit of the Bill.

**Part 4 – Community Right to Buy Land**

This section aims to build on the learning of the Land Reform (Scotland) Act 2003 over the last 10 years and makes amendments to the Act. One of the key amendments is the extension of the community right to buy land element of the Land Reform (Scotland) Act to cover the whole of Scotland. This would allow urban communities the right to buy land and buildings, in line with certain powers already in place for some rural communities. The proposed changes and amendments gained broad support in the consultation on the draft Community Empowerment and Renewal (Scotland) Bill. VAS therefore has no comments to make on this section at present.

**Part 5 – Asset Transfer Requests**

A number of public bodies are already involved in schemes which work towards transferring assets from the public boy to community bodies. This Bill looks to extend this further, placing this approach into legislation and opening to the whole of Scotland. It gives the initiative to communities to identify property they are interested in and places a duty to agree to the request unless they can show reasonable grounds for refusal.

VAS welcomes this approach as it extends rights and potentially releases much needed assets to communities. The principles are therefore sound but could still be refined further. VAS believes an asset register should be collated by statutory bodies and made readily available to the public, creating a transparent asset transfer system, along with a duty to publicise when a transfer request has been made. This should be coupled with a transparent approach to the current state of assets and whether they are in a suitable condition to be transferred to community organisations. Clarification also needs to be given over the process whereby more than one community body initiates an asset transfer request.

Finally, one area has already reported the transfer of local authority assets to an arm’s length organisation on a significant scale. We have concerns that in a situation where a public body wishes to protect property and withhold it from possible asset transfer that they may also be inclined to place these assets in an arm’s length organisation or trust and therefore exclude it from this piece of legislation. This is clearly not in the spirit of the Bill and does nothing to empower communities, therefore we are calling for clarification on the position of assets that were previously controlled by a public body but have been voluntarily transferred to an arm’s length organisation.