

## **Community Empowerment (Scotland) Bill consultation**

### **Written Submission from the Coalition for Racial Equality and Rights**

**January 2014**

The Coalition for Racial Equality and Rights (CRER) is a Scottish anti-racist organisation which works to eliminate racial discrimination and promote racial justice across Scotland. CRER views improving approaches to community empowerment for minority ethnic communities as essential to the process of reducing inequality. We therefore welcome the opportunity to contribute to this consultation. In order to make our response as effective as possible, this brief submission concentrates only on the areas of greatest relevance to our work.

#### **Outcome of previous consultation round**

In our view, it is not entirely clear how the previous round of consultation on the Community Empowerment and Renewal Bill has influenced the current proposals. The analysis provided on the Scottish Government website sets out the views gathered, but not the position of policy makers concerning these views. This is a common issue in consultation processes which can seriously impact respondents' confidence in the policy process and their willingness to engage.

Several key factors reflected in the analysis of responses from the original round of consultation are missing from, or poorly reflected in, the new proposals. In our view, the following issues are of particular concern and should have been considered for inclusion:

- Clarification of the role of communities of interest, including equality groups
- Lack of representativeness of many Community Councils and concerns about whether the current Community Council structure is fit for purpose
- Potential role of participatory budgeting and co-production in strengthening community involvement

- Proposals for a duty on the public sector to follow the National Standards for Community Engagement
- Proposals for a duty on the public sector to publish and communicate community engagement plans

### **Definitions of 'community'**

We would appreciate clarification of the proposals' application to communities of interest such as minority ethnic communities and other equalities groups. Currently, elements such as the right to buy refer exclusively to geographical communities. Communities of interest could benefit significantly from inclusion in community empowerment provisions across the board.

In some areas, for example in the case of right to buy, this sort of extension could have practical implications which differ significantly from current practice. For example in the case of right to buy, current balloting practices would not be appropriate. There would also be issues around the need to balance rights of the local geographical community with protection from discrimination for protected characteristic groups, who may face prejudice from geographical communities which would hamper opportunities for community empowerment.

A considerable opportunity to address disadvantage could be lost if the proposals outlined are not accessible to equality groups and other communities of interest, and therefore we would recommend that this issue should be reviewed before the current Draft Bill progresses any further.

### **Who benefits from community empowerment?**

CRER believes that, without careful attention to accessibility, capacity building and representativeness, the current proposals have the potential to entrench existing inequalities.

The danger is that those communities already better empowered will be the primary beneficiaries. Although the consultation paper discusses work around capacity building, what is already available is inadequate. Existing or future capacity building activities may not be targeted effectively, especially given the geographical focus of the Bill and consequent discourse around community empowerment. For example, extending the community right to buy to urban

areas has the potential to benefit minority ethnic communities due to the relatively greater concentration of these communities in cities, however this can only happen if capacity building explicitly includes these communities.

To have the desired impact, this would need to focus on communities of interest rather than being bound by locality. Concerns about whether minority ethnic communities and other equalities groups benefit at all from place-based policies are long standing (see, for example, Dr. Peter Matthews' 2012 review for the Equality and Human Rights Commission<sup>1</sup>). It is necessary for equality to be at the heart of new community empowerment legislation if the mistakes of the past are to be avoided.

As mentioned at the previous section, there are also concerns around extending the statutory rights of Community Councils. Whilst CRER is aware of several Community Councils with a commitment to widening access and reflecting the needs and views of minority ethnic residents, this is exceptional rather than being common practice. There is an overall lack of transparency around the equality impact of Community Councils and the structures underpinning them.

### **Transparency and accountability**

CRER has specific concerns around the proposals for transfer of assets and participation in outcomes improvement processes. Whilst the principle of greater community involvement is to be applauded, and there will be circumstances where community bodies can use these proposals to great benefit, there must also be safeguards to ensure transparency and accountability.

This is especially the case where community bodies would propose to take over public buildings or deliver public services. In most circumstances, the Public Sector Equality Duties which would have applied to a public sector organisation relating to its management of premises or delivery of services and employment will not apply to the community body (although there is potential for the General Equality Duty to apply in some restricted circumstances). This seriously reduces the potential for challenging negative equality impacts where

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<sup>1</sup> Matthews, P. et al (2012). 'Hard-to-Reach' or 'Easy-to-Ignore'? A rapid review of place-based policies and equality. Glasgow: EHRC Scotland

these arise, and simultaneously increases the chance that they will arise due to the loss of the pro-active elements of the Equality Duties. Similar criticisms could be made regarding loss of protection for service users under the Human Rights Act.

Overall, CRER would argue that the first priority of the Community Empowerment Bill should be to make public sector bodies more responsive to people's needs through improving mechanisms for participation. As it stands, there is potential for some of these provisions to be used to further shed responsibility for service delivery rather than create improvements.

### **Participation in outcomes improvement process**

The right to request participation in an outcomes improvement process is welcome. The fact that there must be reasonable grounds for refusal and the right to an explanation for refusal may help to protect that right to a certain extent, although the lack of proposals for an appeal process is worrying.

The provisions for feedback described in the section on reporting arguably improve the potential impact and practical application of this element of the Bill. The broad definition of an outcome improvement process is positive, as is the provision that if one does not already exist, the public body would have to start a process upon agreeing to a request.

However, stronger measures are needed in order to guard against tokenistic decision making processes by public bodies. Experience with Freedom of Information legislation has proven that a right to request something often results in refusal, and ambivalence around what constitutes a 'reasonable' explanation for refusal. A positive duty on community participation would be altogether more robust, however the wording and application of this would itself need to be subject to extensive consultation and involvement in order to ensure its effectiveness.

No exhaustive explanation of what would constitute an outcomes improvement process is provided within the proposals. Theoretically, it could be possible to regard equality impact assessments (which are currently legally required for new or revised policies and practices) as a type of outcomes improvement process. If a positive duty on participation in outcomes improvement processes was created, it would be useful for this to explicitly

include EQIA as this would close a significant loophole within the current Specific Public Sector Equality Duties (SPSED) regulations in relation to community involvement in EQIA processes. Similarly, the SPSED requirement to set equality outcomes should also be regarded as an improvement process, and so further consideration of how to achieve additional synergy between the Community Empowerment Bill and the SPSED would be useful.

### **Strengthening community planning**

CRER believes that there is potential for the Bill to create far stronger measures on improving participation and involvement in local services and decision making processes than reflected in the current proposals. Current approaches to Community Planning often take very little cognisance of communities, particularly communities of interest such as equalities groups and minority ethnic communities. This was reflected in the responses to the initial consultation on Community Empowerment and Renewal Bill and is arguably not adequately reflected in the current proposals.

Concerns of this nature are already arising in relation to the new place-focussed SOA structures. A more stringent outcomes focus is to be welcomed but the outcomes set need to take account of structural and social inequalities, including those affecting minority ethnic communities.

The core duties of CPPs relating to community involvement as set out in the consultation document are vital and need to have a statutory basis, including clarification that communities are not just geographically defined. There must also be effective ways to challenge CPPs if they fail to meet the core duties on community involvement.

Disappointingly, the section on strengthening community planning does not mention the role of the Third Sector Interface (or, indeed, clarify the involvement of communities themselves to any degree). Recent moves towards better representation of Third Sector interests at CPP level are extremely welcome, but need to be strengthened if involvement is to be genuine, effective and sustainable.

Lastly, community involvement and participation in Community Planning needs to feed into and be accompanied by stringent equality impact assessment processes to ensure that the needs of protected characteristic groups and groups at risk of disadvantage are taken into account. Whilst consultation and

involvement processes are vital in identifying needs and impacts, it cannot be assumed that protected characteristic groups will have equal access to these and capacity to participate, as this is often not the case. The responsibility for identifying impacts lies with the public bodies, and they must make efforts to do so beyond simple consultation exercises.

### **Embedding the outcomes approach in legislation**

With regard to proposals for embedding the outcomes approach in legislation, any national outcomes framework would need to have equality and human rights considerations at its core. Previous experience with Scotland's five strategic objectives shows that public bodies value having priority areas to tackle. However, the prominence of specific priorities sometimes comes at the expense of work to alleviate other areas of disadvantage, including issues affecting protected characteristic groups and marginalised communities. This can be avoided through more effective equality mainstreaming and a participatory process which ensures the experiences and needs of the most disadvantaged people are reflected.

### **Equality impact assessment**

Directly acknowledging the need for equality impact assessment with a dedicated section of the consultation document is entirely reasonable, however care is needed in regard to interpreting the responses.

Comprehensive, robust equality evidence on these issues is unlikely to be readily available to equality organisations and other interested parties. The danger then arises that the summary of consultation results will suggest there are few potential negative impacts simply because respondents have been unable to highlight these in sufficient volume.

It will no doubt be appreciated that for organisations like ours, the entire response relates to equality impact (in so far as we are able to suggest potential impacts). We trust that the Scottish Government will undertake its own equality impact assessment, including reviews of any relevant qualitative or evaluative information on community empowerment, to inform the Bill's future development alongside the consultation results.

To discuss this submission, please contact:  
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