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# **REPORT ON RESPONDING TO THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT CONSULTATIONS ON PUBLIC PARTICIPATION REQUESTS AND ASSET TRANSFER**

**Report by Chief Executive**

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## **SCOTTISH BORDERS COUNCIL**

**29 June 2016**

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### **1 PURPOSE AND SUMMARY**

- 1.1 The purpose of this report is to agree the responses to the two Scottish Government Consultation Papers on Participation Requests and Asset Transfer linked to the Community Empowerment (Scotland) Act 2015.**
- 1.2 At the time the Community Empowerment (Scotland) Act 2015 was passed it was recognised that many parts of the legislation would come into force at different times and that this would involve secondary legislation (orders and regulations) and guidance. A briefing session will be organised for Council members to explain these various parts of the Act. In March 2016 the previous Scottish Government issued a series of consultation papers on aspects of this secondary legislation and guidance including those on Participation Requests and Asset Transfer. The deadline for responses has been extended until the end of June 2016 to enable the Council's response to be submitted.

### **2 RECOMMENDATIONS**

- 2.1 It is recommended that the Council:**
- (a) Agree the response to Community Empowerment (Scotland) Act 2015 Participation Requests Consultation on Draft Regulations as set out in Appendix 3.**
  - (b) Agree the response to the Asset Transfer under the Community Empowerment (Scotland) Act 2015 Consultation on Draft Regulations as set out in Appendix 5.**
  - (c) Note that a briefing session will be organised for Council members explaining the various aspects of the Community Empowerment (Scotland) Act.**

### **3 BACKGROUND**

- 3.1 The Community Empowerment (Scotland) Act 2015 received Royal Assent on 24 July 2015. The aim of the legislation is to involve and to give greater say to communities in the delivery of public services and to give more power to communities to assist them in improving the well-being of their local areas. The Act consists of a range of varied topics including some which were added to during the legislative phases of the Bill.
- 3.2 There are eleven parts to the legislation which are as follows:
1. National Outcomes
  2. Community Planning
  3. Participation Requests
  4. Community Rights to Buy Land
  5. Asset Transfer Requests
  6. Delegation of Forestry Commissioners' Functions
  7. Football Clubs
  8. Common Good Property
  9. Allotments
  10. Participation in Public Decision-Making
  11. Non-Domestic Rates
- 3.3 At the time the Act was passed in July 2015 it was recognised that many parts of the legislation would come into force at different times and that this would involve secondary legislation (orders and regulations) and guidance. The position on the various parts of the legislation is shown in Appendix 1. It is intended that all the legislation will come into force by October 2016. A briefing session will be organised for Council members explaining the various aspects of the Act.
- 3.4 In March 2016 the previous Scottish Government issued a series of consultation papers on aspects of this secondary legislation and guidance including those on Participation Requests and Asset Transfer. The deadline for responses to these two consultation papers has been extended until the end of June 2016 to enable the Council's response to be submitted.
- 3.5 There is also a consultation paper on the community right to buy abandoned, neglected or detrimental land. The deadline for this paper was 15th June 2016 and an officer response has been submitted because of the technical nature of the consultation and a copy of this is to be lodged in the members' library.

### **4 PARTICIPATION REQUESTS**

- 4.1 The Community Empowerment (Scotland) Act 2015 introduces a participation process for local authorities and public bodies. This enables a community body to put forward a participation request to a public service authority asking them to take part in a process that will improve the outcome set out by the community body. The public service authority must agree to the request and set up a process unless there are reasonable grounds for refusal. If it refuses the request, it must explain the reasons. At the end of the process the public service authority must publish a report on whether the outcomes were improved and how the community body

- contributed to that improvement.
- 4.2 The Scottish Government has now produced a consultation paper entitled Community Empowerment (Scotland) Act 2015 Participation Requests Consultation on Draft Regulations (see Appendix 2). This sets out the proposed methodology in terms of timescales, the expectation on public bodies in dealing with requests and the involvement of communities in the process. The draft response is shown in Appendix 3. The main themes in the response are the need for: a consistent and coherent approach to responding to requests with the provision of a common request form; more flexibility in the timescales for making responses to requests and decision making; and the importance of supporting community groups as part of the process.
- 4.3 Following the end of the consultation the Scottish Government will ask the Scottish Parliament to agree the final Regulations, which are expected to come into force in September 2016. Once this part of the Act comes in to force community bodies will be able to start making participation requests under the Act. Guidance on using the Act will be published once Ministers have decided what will be included in the final Regulations.

## **5 ASSET TRANSFER**

- 5.1 Part 5 of the Community Empowerment (Scotland) Act 2015 provides a framework for the asset transfer process for public bodies including local authorities. It also requires each relevant authority to publish a register of land (including buildings and other structures) which it owns or leases, 'to the best of its knowledge and belief'. This will help community bodies to know what might be available for asset transfer.
- 5.2 The Act gives the Scottish Government powers to make regulations to provide more detail of the procedures to be followed. The Scottish Government's consultation paper entitled 'Asset Transfer under the Community Empowerment (Scotland) Act 2015 Consultation on Draft Regulations' was published in March 2016 (see Appendix 4). This asks for views on the detailed procedures for making and dealing with asset transfer requests. Guidance for community bodies on using the Act will be published when the final regulations are produced. The consultation paper also explains the requirements of the Act and gives advice on good practice. The Scottish Government is encouraging relevant authorities to use this information to start developing their asset transfer schemes, or amending existing schemes, in advance of the regulations being finalised.
- 5.3 The draft response is shown in Appendix 5. The main aspects of the response are the need for: land registers to exclude land and buildings required for the operational requirements of local authorities and other public bodies; community controlled bodies to be genuinely representative of communities of place; effective business plans to be provided by community controlled bodies; and more flexibility in timescales for the notification and decision making processes.

## **6 IMPLICATIONS**

### **6.1 Financial**

There are no direct financial implications arising from this report.



## 6.2 Risk and Mitigations

There are legislative and reputational risks that could occur if the Council does not have appropriate arrangements in place to fulfil its responsibilities arising from the implementation of the Community Empowerment (Scotland) Act.

## 6.3 Equalities

It is too early yet to carry out an equality impact assessment on this work but any new Council schemes/policies associated with the various sections of the Community Empowerment (Scotland) Act 2015 will need to be equality impact assessed.

## 6.4 Acting Sustainably

No decision is required as yet that will have economic, social, or environmental implications.

## 6.5 Carbon Management

There are no effects on carbon emissions.

## 6.6 Rural Proofing

Rural areas are treated similarly to urban areas in the implementation of the Community Empowerment (Scotland) Act 2015.

## 6.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made.

## 7 CONSULTATION

- 7.1 The Council's Management Team, Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer HR and the Clerk to the Council have been consulted on this report and any comments received have been incorporated into the final report.

### Approved by

**Tracey Logan**  
**Chief Executive**

**Signature .....**

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**Background Papers:** None

**Previous Minute Reference:** None

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