

The Community Empowerment Act (Scotland) 2015: its relevance to coastal community groups.

At the Marine Communities Workshop in May we heard from the Scottish Community Alliance on the community empowerment agenda and on the back of that presentation we thought it would be useful to review the Community Empowerment Act (Scotland) 2015 to see how it might apply to coastal communities and inshore waters.

What is the Community Empowerment Act (CEA)?

On 24 July 2015 the Community Empowerment Bill received Royal Assent and became an Act.¹

It is one of the most recent²³ legislative responses seeking to give communities a range of new powers, to strengthen the community⁴ voice within public service delivery whilst also aiming to build more effective partnerships between national and local government - and all other sectors which affect local communities.

The Act is focused on improving public service outcomes for communities through a process of improving community planning as well as directly empowering communities through the acquisition of land and buildings and having new rights to participate in the way public services are delivered.

In effect, this means that communities will have a greater say in many of the processes that affect their lives.

Why is it important?

One of the most significant changes brought about by the CEA is the extension of the community right to buy - through the Act almost all land in Scotland is open to being secured by local communities seeking to take action. Previously, under the Land Reform Act 2003, this had been restricted to rural communities. Not only has the scope of the Act been extended to all of Scotland but many of the procedures have been streamlined and simplified.

However, the Act has wider benefits when considered in terms of setting the groundwork for a more engaged and participative community sector, and the benefits this can have for public service delivery, drawing on the rich tapestry of knowledge and experience at a local level. This builds on the assessment that communities are best placed to have the knowledge to help plan and deliver public services that work for their local needs.

The Scottish Government recognise that where communities are empowered, local democratic participation is boosted; increased confidence and skills are seen among local people; higher numbers of people volunteer in their communities; and there is more satisfaction with quality of life in a local neighbourhood.⁵

¹ The text of the Act can be found at <http://www.legislation.gov.uk/asp/2015/6/contents/enacted>.

² Commission on the Future Delivery of Public Services (Christie Commission). www.publicservicescommission.org. Published June 2011.

³ The Local Government in Scotland Act 2003 is a key aspect of the Scottish Executive's modernisation agenda for local government and provides a framework to enable the delivery of better, more responsive public services.

⁴ "Community" is not defined strictly within the Act however it essentially refers to any community "based on common interest, identity or geography". For further description of community definitions with the Act please see: <http://www.scottishcommunityalliance.org.uk/articles/22744>.

⁵ Please see for full text: <http://www.gov.scot/Topics/People/engage>

For community empowerment to be effective, it needs commitment at a large and well-invested scale, to *fully* enable community bodies to participate in decision-making. The introduction of a specific and targeted Act such as the CEA gives “community bodies new rights and public sector authorities’ new duties to boost community empowerment and engagement”⁶ across all localities within Scotland.

How might the CEA be relevant to coastal communities?

Whilst terrestrial land rights sit firmly at the centre of the dialogue on community empowerment and community planning, the implications for coastal and inshore resource management have yet to be explored in detail.

A number of new principles and opportunities could be aligned here however. Given management of Scotland’s marine assets is already a devolved issue, and given the reallocation of Crown Estate responsibilities to the Scottish Government through the Scotland Act 2016, there is a significant opportunity to explore how the fundamentals of the CEA might be translated to apply to the local marine assets, as well as the terrestrial assets, of coastal communities.

As an immediate example, the CEA lays down strong principles of community participation that could be applied to processes such as Regional Marine Planning.

Regional Marine Planning is a process which has been taking place with regards to the management of activity within Scotland’s national seas (extending out to 12nm). It regionalises national seas into Scottish Marine Regions (SMRs) and sets up Marine Planning Partnerships whose function involves stakeholder engagement, data collection and the development of plans and reviews. Regional Marine Planning (RMP) is being led by Marine Scotland as a means to deliver the National Marine Plan at a more regional level. However application of principles from the CEA if applied could open up larger scale participation within the process.

More details on the CEA and its potential application

The CEA contains 11 parts⁷, only some of which would have direct implications for community participation in the management of marine assets and activities.

The following looks at some new tools or innovative approaches that may be applied from the relevant sections of the Act for coastal communities seeking to become more involved in inshore management. These are: Community Planning; Participation Requests; Asset Transfers; Community Rights to Buy Land; and Participation in Public Decision-Making.

Part 2: Community Planning

Community Planning is delivered through Community Planning Partnerships (CPPs). Community Planning is not a new concept⁸ however under the CEA, community planning focuses specifically on how public bodies can work together, and with the local community, for the planning, resourcing and provision of services which improve local lives. This would be delivered through Local Outcome Improvement Plans (which

⁶ Please see for full text: <http://www.gov.scot/Topics/People/engage>

⁷ The 11 Sections of the CEA are: National Outcomes; Community Planning; Participation Requests; Community Rights to Buy Land; Asset Transfer Requests; Delegation of Forestry Commissioners’ Functions; Football Clubs; Common Good Property; Allotments; Participation in Public Decision-Making; Non-Domestic Rates.

⁸ Community Planning was given a statutory *basis* in the Local Government in Scotland Act 2003.

replace Single Outcome Agreements⁹). There are currently 32 Community Planning Partnerships across Scotland, all set up to be driven by the ethos of partnership working, rather than a traditional council-led exercise (which community planning has previously tended to be viewed as).

Community planning sits in a complex space; there is an already identified need to incorporate spatial planning with community planning on land. *“There is a drive and commitment for joining up spatial and community planning and growing recognition that place-based approaches through planning can help to maximise impact...these include visioning exercises for plans; community engagement; and stakeholder involvement processes.”*¹⁰

The need to join terrestrial spatial planning and community planning also presents the opportunity to apply similar good practice to marine spatial planning - building on the principles and implications of community planning.

A series of principles¹¹ in community planning are highlighted within the Act and embedded in the practice of Community Planning Partnerships (see box below). These principles are based firmly in local priorities; it could be argued that the current Regional Marine Planning process could be strengthened by incorporating a wider range of relevant and local (not just regional) community interests and aspirations to this particular public service delivery.

Community Planning Partnership principles from the CEA:-

- ✓ Shared leadership;
- ✓ Tackling inequalities;
- ✓ Governance and accountability;
- ✓ Community participation and co-production;
- ✓ Understanding of local communities’ needs, circumstances and opportunities;
- ✓ Focus on key priorities; focus on prevention;
- ✓ Resourcing improvement;
- ✓ Effective performance management

Other positive elements within community planning include fairly small-scale boundaries via the use of local council boundaries for the Community Planning Partnerships - further to this the CEA also introduces locality planning. Locality planning requires subdivisions of the Community Planning Partnership area, with the respective Community Planning Partnership applying its understanding of local needs, circumstances and opportunities to identify smaller scale localities within the local authority boundary.

Community Planning Partnerships also have strong evaluation and monitoring systems to assess how they deliver improved outcomes (assessed over the long- (10 years), medium- (3 years) and short (1 year) term).

⁹ Single Outcome Agreements⁹ (SOA) were established to set out how each CPP is aligning its approach with the four pillars of public service reform: prevention; local integration and partnership; performance improvement, and investment in people - with tackling inequalities having a specific focus.

¹⁰ <http://www.rtpi.org.uk/briefing-room/rtpi-blog/linking-people-and-places-spatial-planning-and-community-planning-in-scotland/>

¹¹ Part 2: Principles Of Effective Community Planning: <http://www.gov.scot/Publications/2016/03/9822/325699>

Local priorities are also integral to the monitoring of community participation within community planning – the views and experiences of local communities on how they feel they are involved in local decision-making forms the evidence used in any review of performance.

Finally, the Community Planning Partnership approach embraces the principles of effective **co-production**¹² - which is aimed at combining the mutual strengths and capacities of all partners (including non-statutory bodies and community bodies) to achieve effective change.

In practice it is worth noting the need to ensure, on an ongoing basis, that Community Planning Partnerships deliver their main goal of local empowerment - ensuring their processes are simple, well organised, accessible by all and tailored for *community* participation and input.

Part 3: Participation Requests

This section of the CEA provides a key mechanism for community bodies to put forward their ideas for how services could be changed to improve outcomes for their community. The legislation for Participation Requests is expected to come into force towards the end of 2016.

Community bodies might use a Participation Request to discuss with public service providers (see list below) how they could better meet the needs of the local community at the receiving end of their services.

Communities might for example want to offer local volunteers to support a service **or may even propose to directly take over the delivery of the service themselves**. There is a presumption within the Act that the public body to whom the request is made will agree to the request to participate in whatever process is required to improve an outcome. It is also important to note that there is no appeal to Ministers if the public body turns down the participation request. Public service authorities included within this in the CEA are:

- local authorities
- Health Boards
- Management boards of colleges of further education
- Highlands and Islands Enterprise
- National Park Authorities
- Police Scotland
- Scottish Enterprise
- **The Scottish Environment Protection Agency (SEPA)**
- The Scottish Fire and Rescue Service
- **Scottish Natural Heritage (SNH)**
- Regional Transport Partnerships

At present the list does not include **Marine Scotland**. This is because Ministers don't have the responsibility for directly delivering services to the public; Marine Scotland draft policy which gets sent to the Ministers to implement - working within this policy setting isn't considered a direct provision of public services.

Other agencies such as SEPA or SNH however have functions which are considered as providing direct services to the public such as commissioning, conducting and sharing scientific research on the natural environment or regulating activities that can cause harmful pollution by monitoring the quality of Scotland's

¹² From Part 2. Section.61.of the CEA: "CPPs should work with communities to consider and, where appropriate, develop opportunities to co-produce services with communities where those communities wish and have the capacity to do so."

air, land and water. However it is likely that Scottish Government (and by association Marine Scotland) will be added early in 2017.

Both SNH and SEPA are already making commitments to ensure their processes are in line with the CEA. Some of the learning, particularly from Community Planning, could also have relevance to how Marine Scotland might approach and interact with local communities through the process of Regional Marine Planning and other public-facing processes such as policy consultations.

Coastal community bodies could use Participation Requests to get more involved in processes relating environmental protection (such as habitat or species protection, or improvement of water quality). In some cases a community group may consider themselves as being better placed to take the lead on the provision of this public service normally delivered by SNH or SEPA. Participation requests are not intended to replace existing good quality community engagement practices.

Coastal communities have already been effective in delivering environmental protection using other, existing legislation such as: [Community of Arran Seabed Trust \(COAST\)](#)'s establishment of the Lamlash Bay No-take Zone via the Inshore Fishing (Scotland) Act 1984; [Scottish Salmon Think Tank's](#) actions on challenging fish farm developments within local planning processes; and [Fair Isle Marine Environment & Tourism Initiative's](#) proposal for a Demonstration & Research MPA via the Marine (Scotland) Act 2010. Careful consideration could be given on how the framework of the CEA might be harnessed to ensure effective engagement of communities in the participation and delivery of other marine management goals.

Part 4: Community Rights to Buy Land

The CEA amends the Land Reform (Scotland) Act 2003, extending the community right to buy¹³ to all of Scotland, urban and rural, and improving procedures (for certain cases). For example, part 4 of the Act introduces a new provision for community bodies to purchase land which is abandoned, neglected or causing harm to the environmental wellbeing of the community, where the owner is not willing to sell that land. This is if the purchase is in the public interest and compatible with criteria laid out in the Act such as the achievement of sustainable development.

This raises the question as to whether an argument could be made that there might be an environmental imperative to secure seabed, where harm is being caused to environmental well-being. Mechanisms to achieve this could be applied to opportunities which already exist under the Crown Estate with whom coastal community groups can establish a pre-lease arrangement via a Local Management Agreement and then seek to lease the seabed for the purpose of nature conservation. Using this tool for nature conservation is as yet an untested mechanism (it has been used for development), but it would be interesting to explore whether the CEA would provide a stronger case for community management of key areas of seabed which might otherwise be under environmental threat.

¹³ Under 'Community Right to Buy' if a rural community is interested in buying land this depends on the landlord deciding to sell the land. The community can register an interest in the land, then if the land comes up for sale they have first choice to buy the land. Under Crofting Community Right to Buy, crofting communities have the right to buy the croft land where they live and work and this is in effect a forced sale as it does not require a willing seller - <http://www.gov.scot/Topics/farmingrural/Rural/rural-land/right-to-buy>

Part 5: Asset Transfer

This provides a right for community bodies to request the transfer of land and buildings belonging to public authorities. The Act sets out a framework for the asset transfer scheme and gives the Scottish Ministers' powers to develop the regulations to fill in the detail for the procedures to be followed. Coastal community bodies may have reasons, in line with any other community of place, for acquiring land and buildings - perhaps as a solid base for the community group to work from or to create local opportunities from council or publicly owned property, which is not currently used to the full. In addition to transfer of title, the asset transfer provisions can include transfer of the lease, the management or simply the use of an asset. The asset transfer of use is very similar to the provisions for participation requests but it worth noting that the asset transfer requests, if refused by the public body, can be appealed to Ministers.

Part 10: Participation in Public Decision-Making

This section of the CEA allows for the creation of new regulations which require public authorities to enable members of the public to engage in its decisions and activities - including in the allocation of its resources.

This specifically links to the Scottish government's move towards Participatory Budgeting¹⁴, which is a way for the general public to comment on and influence spending and investment decisions which the government aims to see being widely delivered across the country.

The opportunities under part 10 (which could include Participatory Budgeting) create new mechanisms for communities to have a say in key decisions (and potentially to access resources where they take on a public service delivery role¹⁵). The details around this are yet to be refined or explored and the necessary secondary legislation would be required to be put in place to enable any application of Part 10. It is important to note that Participatory Budgeting is not covered by the Act specifically, although one could envisage a participation request leading to a Participatory Budgeting exercise.

Conclusion

The Community Empowerment Act presents a real opportunity for community bodies across Scotland to secure a stronger role in the decisions that are being made which affect their daily lives. Through the various mechanisms identified above, case-by-case application of the Act could begin to develop in more detail the scope of these opportunities. More generally the ethos and spirit of the CEA can be upheld in processes which span beyond the immediate scope of the Act and into those relevant processes mentioned above such as Regional Marine Planning.

¹⁴ "63. One example of how CPPs can gain a community perspective is by using Participatory Budgeting as a tool for enhanced community engagement and as a development of participatory democracy. Participatory Budgeting gives local people a direct say in how and where public funds can be used to address locally identified requirements by providing the opportunity to identify preferences and allocate spend within defined parameters."

¹⁵ See: <http://pbscotland.scot> for more information on schemes in your area.

Key Points

1. The CEA is all about local communities having a stronger role in local decision making;
2. This will be done through improving public services for communities through better community planning and other direct mechanisms for getting involved in local decision-making;
3. The CEA also directly empowers communities through the acquisition of land and buildings;
4. There are positive principles built into community planning and Community Planning Partnerships such as prioritising local needs and embedding communities in processes from the beginning to the end;
5. Participation Requests can be made to SNH and SEPA for environmental protection purposes;
6. Aligning with the Community Right to Buy Land, the use of the Crown Estate's Local Management Agreements could be investigated for the purpose of leasing the seabed for nature conservation;
7. Coastal community groups seeking land or property as a base can explore Asset Transfer opportunities within council or publicly owned land;
8. Guidance and regulations are being prepared for each section of the Act. It is anticipated that the guidance for Asset Transfer and Participation Requests will be operational towards the end of 2016.
9. Participatory Budgeting isn't included in the Act. Scottish Government is however investing heavily in its promotion.

Important contacts and further links:

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Twitter: @commempower

See: <http://www.gov.scot/Topics/People/engage>

Also:

- The Scottish Community Alliance: www.scottishcommunityalliance.org.uk/
- The Scottish Community Development Centre: <http://www.scdc.org.uk/>
- Communities Channel Scotland: <http://www.communityscot.org.uk/> The Scottish Community Development Network (SCDN): www.scdn.org.uk/
- Community Development Alliance Scotland: <http://www.communitydevelopmentalliancescotland.org>

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