

## **Consultation on the Community Empowerment (Scotland) Bill**

Response submitted by  
Scottish Refugee Council  
**January 2014**

### **Introduction**

1. Scottish Refugee Council is Scotland's leading refugee charity, which since 1985 has provided help and advice to those that have fled human rights abuses or other persecution in their homeland and seek refuge in Scotland. Our vision is that all refugees seeking protection in Scotland are welcomed, treated with dignity and respect, and are able to achieve their full potential. We support refugees' integration and inclusion from arrival to settlement. We provide advice and information to those seeking asylum and refugees, campaign for their fairer treatment and for better awareness, policy, and law on matters affecting them.
2. Scottish Refugee Council's values include refugee empowerment, engagement, and equality. These are at the heart of our work, as demonstrated by:
  - (a) Extensive experience in providing front-line advice to those claiming asylum who have arrived or been dispersed to Scotland;
  - (b) Community development support for refugee-led groups, notably the Refugee Women's Strategy Group and Scottish Refugee Policy Forum;
  - (c) Dedicated provision for integrating refugees, through our Refugee Integration Service, as well as via community-led seminars on practical matters for refugee communities - including education, health, and housing;

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(d) Engagement with the communities refugees live in to identify shared goals and common approaches to achieving community cohesion and integration; and

(e) Consistent engagement with our diverse membership, which spans refugee communities arriving and settling in Scotland before and after our formation nearly thirty years ago.

3. Scottish Refugee Council's response to this consultation does not seek to cover every question. We share our thoughts on how certain proposals and ideas in the consultation and the Draft Bill may affect our communities of interest notably refugees, those claiming asylum, and those with responsibilities to work with them across public, private, third, and arts and cultural sectors, as well as Scotland's communities themselves. We focus on the implications and potential of the right to request participation in outcome improvement processes in public services, as well as those on strengthening community planning.

### Comments on the Consultation and the Draft Bill

4. Scottish Refugee Council is instinctively sympathetic to the rationale and objectives of the Community Empowerment (Scotland) Bill. Ultimately we hope it may benefit the communities we work with, those claiming asylum and those granted leave to remain under the Refugee Convention, or given other protection statuses. By definition, the men, women and children we work with are starting new lives integrating into Scottish society. In December 2013, we jointly launched "New Scots: Integrating Refugees in Scotland's Communities", a three-year partnership strategy, led by The Scottish Government, the Convention of Scottish Local Authorities, and Scottish Refugee Council. This involves partners from the public, third sectors, and communities around the common objective to promote refugees' integration in Scotland. Most relevant is the action that refugees benefit from The Scottish Government benefit from national work equality and community empowerment.
5. We believe it is critical that the Community Empowerment Bill recognises explicitly not only communities *of place*, but also communities *of interest* who may not be the focus of some of the Bill's proposals, such as land reform. Or, be served well by some current structures, such as local authority-based community planning partnerships. As the results of Census 2011 show, Scotland is a dynamic and international country, therefore the Community Empowerment Bill must recognise and use this diversity as an opportunity for reinvigorating participation and, in so doing, enabling the effective identification and assessment of real, not assumed, needs in Scotland's diverse communities.

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6. Scottish Refugee Council is a human rights organisation. We endorse the Scottish Human Rights National Action Plan and view the Community Empowerment Bill as an opportunity to help realise this vision. The Bill should expressly recognise that an underpinning human rights and equalities approach is fundamental to community empowerment. Therefore, any definitions of community body in a Community Empowerment Bill should be based on core principles of equality, participation, inclusion, accountability, and representation. This complements the positive human rights and equalities duties on Scottish public bodies by virtue, respectively, of the Human Rights Act 1998 and the Equality Act 2010.
  
7. Furthermore, definitions of community body and the general provisions of the Community Empowerment Bill should not only expressly reflect these core principles but also encourage the proactive consideration and identification of intersectional issues for communities and people e.g. an LGBT woman with mental health issues; or undue attention for young Muslim men from criminal justice and law enforcement; or potentially unlawful race-sex disadvantage of some ethnic minority women in employment; a predicament compounded by lack of appropriate childcare, itself a disadvantage caused by social expectations that most women should be primary carers for children and / or elderly relatives.
  
8. Therefore, we are particularly interested in how the consultation and Draft Bill may impact on new and often marginalised groups, who do not benefit from the social connections and structures indigenous groups often enjoy, especially in terms of the:
  - (a) Lack of equality and human rights principles underscoring the present definition of "community body", as outlined above, and arguably inhibiting fair and equal access;
  - (b) Unnecessary limitations in the "Community Right to Request to Participate in Processes to Improve Outcomes of Service Delivery"; and
  - (c) Maximising the potential of the "Strengthening Community Planning" measures in the consultation.
  
9. The rationale of this consultation and draft Bill are positive: namely to support community-led action, better involvement in decision-making, towards improved social, economic, and environmental benefits for communities and those who live in them. Despite considerable and welcome time in developing the proposals - through an exploratory consultation in 2012 followed by this one – there appears to be some disconnect between the objectives in the consultation and how these are reflected in certain parts of the Draft Bill.

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10. This disconnect is clearest when contrasting how the laudable objective of more community empowerment and participation is treated in the consultation with how it is presented in the Draft Bill. So, whereas the consultation speak wells of the Draft Bill's potential to increase participatory democracy through communities initiating or influencing public services by requesting participation in "outcome improvement processes" this is not reflected in the Bill's "right to request participation".
  
11. Scottish Refugee Council welcomes the concept of a right for community bodies to request participation in public service policy development, monitoring, and service provision. However, such a right is not practicable if in isolation from the imperative – as enshrined in the Equality Duties on Scottish public authorities – that those with duties, powers, and resources e.g. public bodies – take responsibility by adopting consistently proactive approaches through community engagement and funded community development. This approach must involve working with and meeting needs in known and unknown or newer communities, particularly those at the margins of society. Such groups include the long-term unemployed, those at chronic risk of homelessness, and some who have not by definition been integrated into mainstream society, including many new refugee communities.
  
12. The fundamental contradiction, however, in the present right to request participation in the Draft Bill is, as the name implies, it does not adequately recognise the inherent inequality in most relationships between communities and public bodies. The point of the Equality Duties, for instance, is to acknowledge that and put in place requirements and guidance to ensure the primary onus for, inter alia, community engagement, development, and involvement sits with the public body; not the often relatively powerless community. In principle a right is good, but it must be practicable, and in order to be such it must sit within a wider framework of duties on public bodies to take a proactive and coordinated approach to equality as well as in community planning. Community engagement and community development are integral elements in such a planned and organised approach.
  
13. One way to make this right more practicable is to, simultaneously, make it less bureaucratic and more accessible by wrapping around such a simplified right, a corresponding duty on those statutory bodies in community planning processes to produce a community engagement plan, underpinned by the National Standards for Community Engagement, and which also includes a requirement to promote communities use of their right to request participation in public services and outcome improvement processes.

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14. Furthermore, such an enhanced and integrated framework could and should be expressly linked to the General and Specific Equality Duties that apply to most Scottish public authorities. These obligations require such public bodies to consistently give "due regard", meeting their public functions, to the need to eliminate unlawful discriminatory conduct; advance equality of opportunity, and foster good relations. To assist in fulfilling this duty public bodies in Scotland are required to undertake certain activities, such as assessing equalities impacts, monitoring, and setting outcomes, all of which rely on high-quality community engagement and sustained community development approaches.
  
15. Specifically, the definition of "community body" in the Draft Bill is unnecessarily restrictive. There is no need, given the aim underlying the right to request participation, to limit it to only constituted bodies, which may often anyway be over-heard, occupying privileged positions on community engagement spectrums. It should not be contingent on being a formal, constituted body (many communities of interest are not), nor should it presuppose an ability to navigate an unnecessarily bureaucratic process, with that in the Draft Bill being at best difficult and at worst fettering the common objective of promoting greater – and we would add more marginalised and diverse – community voices into public services.
  
16. Furthermore, the present right to participate should be for all communities to have a meaningful say on what matters to them, therefore as stated above the burden should not only rest with communities themselves to have to, in effect, request permission to participate. All communities are not equal and therefore those communities that are the most disadvantaged may not be able to exercise this right. Without resourced community development support, we are concerned that this legislation will only reinforce inequalities in access to and influence on public services across different communities as only those who have the most power will, actually and often, be able to exercise this right. Public bodies should not condone but proactively identify and seek to remove barriers to participation which will include, for instance for refugee and other groups, language barriers, childcare and travel costs.
  
17. Scottish Refugee Council therefore wholeheartedly agrees with the aspiration that any fit-for-purpose Community Empowerment Bill should strengthen the voice of communities. However, for this to happen, legislation needs to be unambiguously accessible to all communities and to facilitate such groups' differing perspectives which are always heard and, when appropriate in terms of equality and human rights principles and public service outcomes, they are acted on. In theory, better community engagement by public bodies should lead to better evidence from and better outcomes for communities. However, if such engagement is not met at the communities' end by skilled and long term community development support, particularly for persistently marginalised and / or newer groups - e.g. refugees - then better evidence and outcomes will be no such thing.

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18. So, the significant risk arising from this right to request participation in its current form is that it will disproportionately privilege established and over-heard communities and not those that most need to be heard. This is inefficient as it undermines the preventative potential of the Bill to identify and tackle social malaise at root, through working with marginalised communities – including via genuine community development - to overcome key drivers of poverty and inequity such as poor access to services, un/under-employment, inappropriate housing, lack of gender sensitivity, and social exclusion, which for some refugee communities reflects cultural and sometimes racist stereotyping. Such conservative approaches are, perversely, inefficient precisely as they don't tap into the reservoir of resilience and potential in often marginalised groups, with refugees' one example.
19. The proposals in the consultation on strengthening community planning are not yet reflected in draft legislation. Scottish Refugee Council agrees that effective community planning requires, as the Equality Duties recognise, an increased emphasis on a planned approach to identifying and delivering outcomes with, hopefully, newer and / or marginal groups becoming an integral part of this process. There is considerable opportunity, given these proposals are not yet in draft legislation, to reflect in the Bill the centrality of communities, marginal or not, to the formulation and design and the delivery of services. Public services cannot be effective without community consent and such is not given without community engagement, involvement, and longer-term community development. This is particularly the case with marginalised groups and this Bill must and prioritise that.

### Recommendations

20. Scottish Refugee Council recommends the following:

- The Bill should explicitly prioritise marginal and disadvantaged communities that are conventionally under-heard or ignored to ensure they benefit from the Bill's provisions.
- Human rights principles - non-discrimination, accessibility, participation, and accountability - should be enshrined in the Bill, especially in the criteria underpinning "community body".
- The Bill's right to request participation should be simplified, rendered more accessible and practicable, and underscored by focused community development with marginal groups.
- The Bill should contain a duty on, at the least, Scottish public authorities to produce and implement a community engagement plan, as part of their joint community planning work.

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- The recommended duty on community engagement should be explicitly connected to community planning activities that relate to planning and delivery of the Equality Duties.

21. Finally, Scottish Refugee Council works closely with The Scottish Government on a range of matters of shared interest, including promoting equalities, ensuring unaccompanied children and young people benefit from dedicated independent advocates, as well as through the afore-mentioned Refugee integration Strategy for Scotland. Similarly, we would warmly welcome discussions with the team leading this important work on community empowerment legislation and standards, particularly, going forward, to ensure refugee voices and needs are appropriately integrated into the process.

**Graham O'Neill**  
**Policy Officer**  
**Scottish Refugee Council**  
 0141 223 7982  
[graham.o'neill@scottishrefugeecouncil.org.uk](mailto:graham.o'neill@scottishrefugeecouncil.org.uk)